UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

Adv. Case No. 19-08289-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

PURDUE PHARMA L.P., et al.,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS, et al.,

Defendants.

- x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

September 30, 2020
10:08 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Notice of Agenda / Amended Agenda for September 30, 2020 Hearing Motion to File Proof of Claim After Claims Bar Date (ECF #1645)

HEARING re Stipulation and Agreed Order for Withdrawal without Prejudice of Scott County, Mississippi's Motion to Allow/ Deem Timely Late Filing of Proof of Claim (related document(s)1645, 1647) Filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #1711)

HEARING re Ex Parte Motion of the Debtors for Entry of an Order Shortening Notice with Respect to Motion of the Debtors for Entry of an Order (I) Approving Sale of Debtors Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving Debtors Entry into a Long-Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Lease and (IV) Granting Related Relief filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (related document #1687) (ECF #1685)

HEARING re Motion for Entry of Order Pursuant to 11 U.S.C. 105(a), 107(b) and Fed. R. Bankr. P. 9018 Authorizing the Filing of Certain Information and Exhibits Under Seal in

Connection with the Motion of the Debtors for Entry of an Order (I) Approving Sale of Debtors Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving Debtors Entry into a Long-Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Leases and (IV) Granting Related Relief (related document #1687)(ECF #1686)

HEARING re Motion of the Debtors for Entry of an Order (I) Approving Sale of Debtors Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving Debtors Entry into a Long-Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Leases and (IV) Granting Related Relief (related documents #1685 and #1686)(ECF #1687)

HEARING re Declaration of Rafael J. Schnitzler in Support of Motion of the Debtors for an Order (I) Approving Sale of Debtors Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving Debtors Entry into a Long- Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Leases and

(IV) Granting Related Relief filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #1688)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al Motion to Extend Time / Motion to Extend the Preliminary Injunction (related document(s)1) (ECF #197)

HEARING re Memorandum of Law in Support of Motion to Extend the Preliminary Injunction (related document(s)197) filed by Benjamin S. Kaminetzky on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies (ECF #198)

HEARING re Declaration of Benjamin S. Kaminetzky in Support of Debtors' Motion to Extend the Preliminary Injunction (related document(s)197) filed by Benjamin S. Kaminetzky on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies (ECF #199)

Reply Declaration of Benjamin S. Kaminetzky in Support of

Debtors' Motion to Extend the Preliminary Injunction
(ECF #206)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al
Objection to Motion /Second Restatement of Limited Objection and Reservation of Rights of Tennessee Public Officials in Response to Debtors Motion to Extend the Preliminary Injunction for Richard Sackler (related document(s)197) (ECF #201)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al
The Non-Consenting States' Voluntary Commitment and Limited Objection in Response to Purdue's Motion to Extend the Preliminary Injunction (related document(s)197) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non- Consenting States (ECF #202)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al
Limited Objection to Extension of the Preliminary Injunction (related document(s)197) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF#205)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al Reply Memorandum of Law in Support of Motion to extend the Preliminary Injunction (related document(s)197) filed by Benjamin S. Kaminetzky on behalf of Avrio Health L.P., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies (ECF #205)

HEARING re Independent Emergency Room Physicians' Motion to Allow Class Treatment (related document(s)1629)

HEARING re Debtors' Objection to Movant, Independent Emergency Room Physician's Motion for Class Treatment (ECF #1717)

HEARING re The Official Committee of Unsecured Creditors Response to Movant Independent Emergency Room Physician's Motion for Class Treatment Pursuant to Fed. Bankr. P. 9014 and 7023 for an Order Making Fed. R. Civ. P. 23 Applicable to These Proceedings, and Granting Related Relief (ECF #1718)

HEARING re Objection to Motion / Public Claimants' Joint Objection to Independent Emergency Room Physicians' Motion to Permit the Filing of a Class Proof of Claim (related document(s)1629) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (ECF #1720)

HEARING re Joint Statement of Debtors and Public Claimants in Response to Movant Independent Emergency Room Physician's Request to Adjourn [Related to ECF No. 1731] filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #1743)

HEARING re Reply to Motion ER Physician's Motion for Class Treatment (related document(s)1629) filed by Paul S Rothstein (ECF #1731)

HEARING re Debtors' Omnibus Objection to Motions by Certain Claimants for an Order Allowing them to Proceed with a Class Proof of Claim and Certifying Class (ECF #1421)

HEARING re Public Claimants' Omnibus Objection to Motions for Leave to File Class Proofs of Claim (related document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other

Contingent Litigation Claimants (ECF #1431)

HEARING re Notice of Withdrawal of ER Physician's Motion Except as to Specifically Reserving Indiv Request to Participate in Ongoing Mediation for the Limited Purpose of Implementation of the Plan (related document(s)1629) filed by Paul S Rothstein on behalf of Paul S Rothstein (ECF #1746)

HEARING re Motion to Authorize / Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (ECF #1674)

HEARING re Objection to Motion For Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (related document(s)1674) filed by Paul Kenan Schwartzberg on behalf of United States Trustee (ECF #1708)

HEARING re Objection to Motion (related document(s)1674) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1709)

HEARING re Memorandum of Law In Support of Ad Hoc Committee on Accountability's Objection to Debtors' Motion to Pay Bonuses (related document(s)1674) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1710)

HEARING re Debtors' Omnibus Reply in Support of Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (related document(s)1674) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #1742)

Transcribed by: Sonya Ledanski Hyde

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HAYLEY THEISEN

SCOTT FLAHERTY

NANCY GOLDIN

P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain. We're here in In re Purdue Pharma, LP, et al. This is a completely telephonic omnibus hearing. I'll ask you to identify yourself and your client the first time that you speak. It's probably a good idea to do that if you speak later to make sure that the court reporter can put together your voice with your name and client.

There's one authorized recording of these hearings. It's taken by Court Solutions which provides a copy of a daily basis to our clerk's office. If you want to order a transcript, you should contact the clerk's office to arrange for the preparation of one.

So with that introduction --

MAN: Sir, can you hear me?

THE COURT: Yes.

MAN: All right. I'm in inmate at USP Terra Haute and I'm -- me and my counsel are attempting the follow these instructions.

THE COURT: Okay.

MAN: I have a telephonic court hearing before Drain. So --

THE COURT: All right. I am Judge Drain, sir. Just keep listening --

MAN: How do you do, sir? Thank you very much for

accepting my call, sir.

THE COURT: All right. Very well. All right. So with that introduction by me, I have the amended agenda submitted by the debtors and I'm prepared to go down that agenda.

MR. HUEBNER: (Indiscernible), Your Honor. Can I be heard clearly and shall I proceed?

THE COURT: Yes. You can go ahead.

MR. HUEBNER: Thank you, Your Honor. Good morning. For the record, this is Marshall Huebner of Davis, Polk & Wardwell on behalf of the Purdue debtors.

Your Honor, this is the first hearing since we passed our one-year anniversary in Chapter 11 on September 15 of last year, and I did want to take just a minute to note in particular there's something that was filed on the docket a couple weeks ago that was not the subject of a hearing but, in fact, is one of the most momentous documents, frankly, that I think is related to this debtors in a very long time. And that document is the mediator's report. I do want to spend just a minute to advise, formally, the Court and the public and they're exactly what that represents because I actually think it is, in fact, a momentous event in these cases.

THE COURT: Okay.

MR. HUEBNER: As requested in the mediator's

report, the non-federal public claimants which is really the states and the cities and the counties and the tribes have agreed that all value received by them through these Chapter 11 cases will be exclusively dedicated to program designed to abate the opioid crisis and cannot be used for any other purpose other than small amounts used to fund administration of the programs themselves and legal fees and costs.

As the mediator's report sets forth, to their knowledge, this is the first time that states, territories, native American tribes, and local governments have agreed to be bound by such a commitment which will be embedded both in the plan of reorganization and the confirmation order approving such plans. We have been talking since the very early days of this case -- in fact, the very first day of the case -- about what I think is a shared value of so many people in this case, that 100 percent of the assets of Purdue and hopefully a very substantial sum from the shareholders as part of a global settlement will all be used 100 percent to address and abate the opioid crisis.

You have many people early in the case spoke about their experience in tobacco and other settlements where they were all sorts of scandalous articles later about what money was used for and we have all, I think, have committed that (indiscernible). I can remember that this was not going to have those attributes to it. And that is now getting locked

in in the way that I think is really quite important.

A second thing that happened in that mediation report and in phase one of the mediation which went on for months with incredible good faith participation by so many people under the guidance of our able mediators during a national pandemic and times of almost unprecedented pain and dislocation for our country in so many ways are that the value allocation among the non-consenting groups, the ad hoc groups, the MSG, and the native American tribes, including culturally appropriate abatement programs for these communities was also addressed and advanced very substantially. Again, with respect to abatement and local participation mechanisms in determining what programs will be funded and the NAACP and the non-federal public claimants have also committed to continue to engage regarding concern that that could lead to implementation.

And so on the government's side with a wide variety, obviously, of sort of levels of government (indiscernible) on the non-federal side, of political perspectives of views about this case and situation -- a truly set of agreements was reached.

The progress is actually no less remarkable on the private side. AS the Court knows, there were essentially five groups of pods of private claimants that were sole phase one mediation parties, and in essence, I think the

simplest way to summarize it is that agreements in principle and then for the (indiscernible) of term sheets -- one was done too late to get to a term sheet before the mediation report was filed, that it's moving along -- were reached. There are issues still to be resolved, but I think they are more along the lines of implementation issues by and large. Some of the issues are not tiny, but I think we will get through them.

And there as well, for every group other than the personal injury claimants themselves will be eligible to get cash distributions through, and I quote, fair and equitable trust distribution procedures developed by the personal injury claimant's but subject to the consent of the non-federal public claimants, (indiscernible) such to not to be unreasonably withheld and approval by the Court as part of a confirmed plan of reorganization with participation also (indiscernible) the NES committee. Other than the personal injury claimants, the other groups have all agreed to dedicate substantially all their allocations, again, to abatement, specific to the opioid crisis.

And so this is really just a tremendous, tremendous achievement for which many people who pulled, you know, all-nighters, late-nighters, weekends, and, of course, the mediators really do deserve to take a moment and pause, because, you know, we had said all along that, you know,

intercreditor allocation was obviously not only a seismic issue but a gating issue that simply had to be resolved before we could turn to the next phase of the case and, frankly, hopefully, as we discussed accelerate that next phase appropriately.

As the meditator's report sets out and this will be my last comment on the mediator's report, the term sheets are conditioned on a plan of reorganization that includes participation by the Sackler family, and three of the four term sheets are also conditioned on the resolution of the United States' claims on terms reasonably acceptable to the non-federal public claimants. And so as we always knew, you know, one of the meta-issues in the case was intercreditor allocation. Another was, where was the money going to go. And those issues have, in essence, have now been resolved, subject to some final issues that I said before that need to be addressed which now we're able to, I think, you know, fully and hopefully completely to the remaining issues which include involving -- resolving the claims of the Department of Justice and, obviously, ideally, resolving the claims of the state and the parties against the shareholders and going to a resolution that has the type of sort of all-in global structure that we've been talking about since the beginning.

So that is something that I think I did want to pause on. The second thing that I do want to pause on just

for a minute before literally turning to the individual items on the agenda, is that the agenda letter itself is actually another kind of noteworthy document. As we promised the Court on the first day of the case and I believe that we have kept that promise at every hearing, you know, we would all work like the dickens to narrow, to resolve, to restructure and to hopefully obviate the need for -- to resolve whatever issues we possible could. As this Court know from other experience, in many cases, you have three, five, seven, nine contested matters on, seemingly at each and every omnibus hearing in the Medica case. We've approached this case differently as we always do and so, you know, the reason we filed so many amended agenda letters in the days leading up to the hearing is because we just don't stop until the hearing actually begins trying to narrow and resolve things.

And so when you look at the agenda for today, at least the way we see it, you know, we're not here litigating five, six, seven, eight class claim motions which originally, actually, was (indiscernible) to be what September was going to be consumed with and now it's not happening at all, not even one based on the recent withdrawal. We will potentially be going to be commencing a multi-month extremely, complicated, difficult, involved aggregate claims estimation process. Our belief is that is

now obviated in its entirety and we hope for the duration of the case. With respect to the deals that were reached in the phase one mediation, we might well have had to litigate the injunction against multiple core constituencies in this case. Instead, while -- with no disrespect to the objectors who of course we need to discuss and resolve, I think the issues are fair, fair more narrow, certainly with the core constituencies for the most involved in this case, then frankly, we though they might in the beginning which itself is sort of a negative milestone of sorts. So with respect to the wages motion, as the Court will hear when we get to that, again, what is often very difficult and very inflammatory and we all well understand why. These are complicated issues and words like, (indiscernible) and compensation and, you know, millions are all terribly difficult words in the context of any Chapter 11 case, not just ones that are also politically and medically and -- sort of charged with sort health and human safety issues -- but all of them.

I think this Chapter 11 is difficult place where many people are suffering losses but there as well, the issues, frankly, with our core constituencies for today, other than the U.S. Trustee -- we also do have the ad hoc committee of accountability which is (indiscernible) comprised of five individual people who have filed proofs of

claim against Purdue -- those issues (indiscernible) also consensual, which is itself is, I think, is another milestone. And there's Coventry which is, you know, people as I said at one of the other hearings -- people sometimes forget that this is actually an operating pharmaceutical company that every day hundreds of people have to come to work and, you know, do dangerous, complicated things and, you know, sell products and make products in ways that are appropriate in the manufacturing facilities. And, you know, we are relentless in our quest to increase the value of the company, to engage in rational economic transactions, and the Coventry transactions are actually very large material transactions that are completely uncontested in another way that, I think, people are working to add value to the pot so that we can, frankly, get all these professionals out of the way and turn all of our meters off and start getting this value out to the American people for the abatement purposes that every single creditor constituency has agreed that it is going to.

So with that, you know -- and forgive me, sir, a ten-minute stage setting to mark or acknowledge our sort of one-year anniversary. We certainly have some very hard work ahead. I don't think anybody is sanguine about that. The issues that remain in front of us are complicated, and as I sometimes say, you know, you still have river to cross but

it doesn't mean that you should forget that you've already crossed a lake that's behind you. And I feel a little bit that that's where we are.

So with that, Your Honor, unless the Court has any questions, I'd like to turn the podium over to Mr. Robertson who I think will rip us through us to uncontested matters and then we can begin with the things that are contested.

THE COURT: Okay. Well, before that, let me say a few things. First, just a mechanical point. I would urge everyone, again -- not urge -- tell them to put their phones mute so that those who are speaking can be heard and only unmute yourself when it's time to speak.

Secondly, I do want to highlight the filing of the mediator's report dated September 23, which of course, I read. First, I want to thank both mediators, Mssrs. Phillips and Feinberg. Obviously, they were well compensated for their work, but their work was, looking at it from afar, remarkable and of great benefit, I believe, to the parties and interests, the estate, and the case in general.

I also want to think the people who participated in the mediation which was a very wide group and a diverse group -- a remarkably diverse group. The non-federal public claimants include the ad hoc committee of governmental and other contingent litigation claimants, the multi-state

governmental entity group and the ad hoc group of non-consenting states. With the exception of two states that settled their issues with these debtors pre-bankruptcy, this group of non-federal public claimants includes all of the states in the union, as well as territories, as well as a wide array of governmental entities that are not states.

The group also included a widely dispersed group of personal injury claimants and their respective counsel, third-party payors and insurance health carrier plaintiffs, an ad hoc group of hospitals throughout the country, the NSA committee, that is the ad hoc committee of NSA children, insurance purchasers, Native American tribes, and in an important observational role, the federal government, the Department of Justice, and as included partway through the mediation, public school districts and the NAACP.

It's rare -- perhaps unprecedented -- to have the level of consensus that occurred in the mediation occur in this country. And it is due, not only to the mediators, but also as the mediators recognized in their report, the good faith and hard efforts of the parties that I've just listed.

I'm also gratified to see that the parties and interests have acknowledge the importance of devoting substantially all of the resources of these debtors to abatement which uniquely in a bankruptcy case can be binding for all time if a plan is confirmed. That was a goal of key

parties in this case and me since the beginning of this case and is a great achievement given the diverse interests involved.

The work as Mr. Huebner noted is not complete but the agreements main terms are hammered out by the mediators and the parties are going forward in reliance on them. So I want to thank all of the parties for participating in a such a constructive way in the mediation.

So why don't we then continue with the uncontested matters that are on agenda item Roman numeral one.

MR. MCCLAMMY: Good morning, Your Honor. It's Jim McClammy from Davis Polk on behalf of the debtors. Can you hear me?

THE COURT: Yes. Thanks.

MR. MCCLAMMY: Excellent. I have the first item on the agenda. That is the Scott County late filed claim motion. That had been resolved with thanks to the consultation with the UCC and counsel for Scott County by stipulation that presented to the Court on November 22nd. There have been no further responses. The overview of the resolution is essentially that the motion is withdrawn without prejudice allowing time for Scott County to see how the plan is formulated, believing that with respect to how the current agreements have shaped up and the expectation of how the plan will be implemented, that there won't be a need

for them to pursue their claim in the bankruptcy. But if things do not, you know, play out that way, they reserve their ability to refile their motion with parties saying that there's any prejudice to them from having waited but all parties' defenses and positions are preserved as of the date of the filing of their late claim and can be contested at a later time should it be needed.

Unless the Court has any questions on the form of the stipulation, we would request that the stipulation be entered. I'm not sure that I saw counsel for Scott County among the parties on the line, but Mr. Coxwell for Scott County did sign the stipulation.

THE COURT: Okay. Does anyone have anything further to say on this matter? All right. I will so order the stipulation. This agreement, it appears to me, is one of many that the mediation has helped along to avoid what would otherwise be a contested issue. If in fact the plan does go forward with the abatement that have -- has been agreed to by non-governmental entities in other respects is confirmed, I would assume that since Scott County would not have its own dollar claim but rather benefit like other governmental entities and third parties from the expenditure of the debtor's resources in abatement that motion really loses much of its, if not all, of its meaning, that is the motion for the claim to be deemed timely filed similar to

the treatment of the various class proof of claim motions that have been adjourned sine die.

So you can email the stipulation in Word format to chambers to be so ordered.

MR. MCCLAMMY: Thank you very much, Your Honor. With that, I will turn the podium over to Mr. Robertson who will be handling agenda item number 2.

THE COURT: Okay.

MR. ROBERTSON: Good morning, Your Honor. For the record, Christopher Robertson, Davis, Polk & Wardwell on behalf of the debtors. Can I be heard clearly?

THE COURT: Yes. Fine, thanks.

MR. ROBERTSON: Thank you, Your Honor. This next three items on the agenda today are related. They are the Coventry facility sale motion, the motion to shorten notice with respect to the sale motion, and the related motion to seal. These three motions are unopposed. We filed a certificate of no objection with respect to the sale motion and the motion to seal on Monday the 28th at docket number 1735. A revised form of sale order which addresses informal comments from two parties was attached as an exhibit to the certificate of no objection.

If I may, Your Honor, very briefly. Debtor Rhodes Technologies operates an active pharmaceutical ingredient or API manufacturing facility in Coventry, Rhode Island. The

Coventry facility sale motion describes a proposed transaction whereby the debtors would sell the Coventry facility and related assets to an affiliate of Nuramco, LLC and would enter into a long-term API supply agreement with Nuramco.

As described in the Coventry facility sale motion and the accompanying declaration of Mr. Rafael Schnitzler of PJT Partners who is present telephonically this morning as well, the debtors believe that the transaction will provide the debtors with a stable and secure source of critical APIs at substantially below current cost, while unburdening their estates from the costs associated with the ownership and operation or potential closure of the Coventry facility.

The debtors conducted an extensive private marketing and negotiation process and believe that the proposed transaction represents the best available offer, is value maximizing, and it's in the best interest of the debtors and their estates.

Your Honor, I believe it makes sense to turn to the motion to shorten, docket number 1875, at this time. For the reasons set forth in that motion, the debtors believe that cause exist to have the sale motion heard on 16-days notice and that the notice of the sale motion was timely and sufficient under the circumstances. No parties have objected to the adequacy of notice. I'm happy to

address any questions that Your Honor may have, and otherwise, we respectfully request that the motion to shorten be granted.

THE COURT: Well, on the notice that was given, in addition to noticing the party of interest under the case management order, did you provided notice of the motion to counterparties, to the executory contracts proposed to be assumed and assigned?

MR. ROBERTSON: Your Honor, yes, we did. We provided notice to all contract counterparties, all parties on the parties of interest list. We also provided notice to all know claimants of Rhodes Technologies. We didn't serve the full, you know, sort of motion and declaration but we served a notice of hearing. We also published notice in the Wall Street Journal.

THE COURT: And did you serve governmental entities that would be affected by the order including the provisions providing for transfer of authority to manufacture these products?

MR. ROBERTSON: Yes, we did, Your Honor. We served notice on all regulatory entities that we believe have any interest in the Rhodes Tech facility and also on sort of the major governmental entities listed in the motion -- DOJ, EA and the like.

THE COURT: All right. Okay. Does anyone have

anything to say on the motion to shorten which would shorten the time for the hearing on this motion by five days? All right. I will grant the motion. As most of you know unlike other judges, I normally will not enter these types of motion to shorten on an ex parte basis if I believe that there might be a basis -- a good basis -- to shorten. I'll schedule the hearing on the motion to shorten for the same day as the hearing on the request for underlying relief to give parties and interests an opportunity to say that the matter doesn't need to be heard on a shortened notice.

No one has objected here. Based on my review of the motion, the motion does establish sufficient cause to shorten the notice by a handful of days. So you can email that order to chambers.

MR. ROBERTSON: Thank you, Your Honor. Turning to the Coventry facility sale motion and the motion to seal, rather than belabor the Court with a further recitation of our papers, I'm happy to address any questions that Your Honor may have. Otherwise, as these motions are unopposed, we would respectfully request that each be granted.

THE COURT: Okay. Well, let me deal with the sealing motion first. Does anyone have anything to say on it, including the U.S. Trustee? Okay.

I have reviewed the redacted and unredacted motion and based on that review coupled with the absence of an

objection, I've concluded that the limited redactions that are sought here are consistent with Section 107(b) of the bankruptcy code and Rule 9018. They're targeted directly at what would appear to me to be properly protected confidential commercial information that if disclosed would be detrimental to the debtor's business and the ongoing relationship with the purchaser. So I'll grant the motion to redact and to file the redacted version under seal.

As far as the underlying motion is concerned, you've answered my question on notice. I want to focus on the closing date. When do the parties contemplate at this point in the calendar closing this transaction?

MR. ROBERTSON: So, Your Honor, the APA provides that the closing date cannot be before January 1st of next year without the consent of the parties and my understanding is that the target closing date is on or around January 1.

THE COURT: Okay. And in the meantime, the parties are working on a transition services agreement or working under one?

MR. ROBERTSON: They are working on the TSI. That's correct.

THE COURT: Okay. And there have no glitches with that so far?

MR. ROBERTSON: None that I'm aware of, Your Honor. Counsel to the purchaser is also on the line if he

has different views but none that I'm aware of.

THE COURT: Okay. And as I understand it, although the assumption and assignment of contracts would be approved as part of the order that you would be submitting to me after this hearing if I grant the motion, you're actually providing a cure notice and a notice of specific contracts later in time around the period of the closing date. Correct?

MR. ROBERTSON: That's correct. I'm happy to give more color on that if it's helpful.

THE COURT: Okay. Why don't you go through that? I just want to make sure I understand the mechanic. I think I do, but I just want to make sure how it's supposed to work.

MR. ROBERTSON: Sure. Certainly. So there are three buckets of contracts. There are the sellers pre-petition contracts that are eligible to be assumed and assigned to the purchaser. There are certain excluded contracts which just simply cannot be assigned to the purchaser which are scheduled under the APA. And there are post-petition contracts, all of which are going to assigned to the purchaser.

The debtor sent the notice attached to Exhibit C to the sale motion to all counterparties, the pre-petition contract that could be or might be assumed in the sign, and

also to all counterparties that post-petition contracts. So those are all the contracts of buckets one and three that I mentioned but not bucket two, the excluded contracts.

Proposed cure amounts for notice for all pre-petition contracts, counterparties had until the assumption of the assignment objection deadline which was September 27th -- I believe that was Sunday -- at 4:00 p.m. to raise objections the cure amounts. We received one informal objection in the amount of about $6,000 which we resolved with the counterparty. Those counterparties did, Your Honor, receive, you know, sort of full notice for an assumption and assignment of contracts. They had more than 14 days before today's hearing notice in that regard.

And then before the closing date, the purchaser can choose which contracts -- which pre-petition contracts that are not excluded contracts -- it will take assignment of. Within five days or five business days after the closing date, the debtors will send a notice and file the notice with the Court informing the counterparties to the contracts that have been selected as assigned contracts as their contracts have indeed assumed and assigned. That's in paragraph 26 of the proposed order.

Then there's a second date under the APA which is called the designation deadline -- 60 days post-closing or the effective date of the plan if that comes sooner which

kind of gives the purchaser a second opportunity to designate contracts that weren't designated as assigned contracts (indiscernible) closing date as assigned contracts and they'll be another notice, you know, the same as the first one, essentially, published -- or I should say filed with the Court and served on the contract counterparties notifying them that their contracts have been selected.

I believe that -- you know, that is an overview of the process as we see it.

THE COURT: Okay. So to summarize then, the motion seeks and the order would provide that I am approving the assumption and assignment of the contracts subject to the procedure that you just set forth, i.e., it may be that certain of those contracts would not be assumed, ultimately, and assigned because the purchaser has the right up to the designation date to included or exclude from that basket. But I am making a finding -- you're asking me to based on the absence of objection after due notice -- that the purchaser is provided adequate assurance of future performance and the cure claims have been fixed as identified by the debtors to the contract counterparties. Correct?

MR. ROBERTSON: That is exactly correct, Your Honor.

THE COURT: All right. Okay. All right. I guess

one last question. I think I (indiscernible) too. There have been no higher and better offers expressed and there's no one on the phone who wants to make a higher and better offer for this set of assets?

MR. ROBERTSON: Your Honor, I can confirm that we have not received any higher or better offers either before filing the motion or subsequently. Obviously, you know, I will allow others to speak up if there's anyone on the phone.

THE COURT: Okay. All right. I will grant the motion approving the sale as set forth in the attached agreement as well as the (indiscernible) related long-term API supply agreement as well as authorize the assumption and assignment or assignment as applicable of the executory contracts on expired leases as we just discussed.

The sale motion and supporting declaration by the debtor's financial advisor Mr. Schnitzler coupled with the absence of any objection to this motion that has not resolved by the proposed revised order established that this is the proper exercise of business judgment in the best interests of the debtors and their estate -- estates, including in respect to the seller Rhodes Technologies. Further, although it's not clear to me that there really are any interests or liens that were on this property or these assets that would be protected by 363(f), I'm prepared to

make the 363(f) findings and enter the 363(f) portion of the order given the widespread notice and there being no objection. Finally, based on the declaration in the motion and again the fact that the motion's unopposed, I can make the other findings in the order including to respect of Section 363(m) assuming of course that the sale actually closes and the parties go forward with -- in related transaction for the manufacturing agreement.

The free and clear provisions of this order are fine with me given, again, the wide notice and the lack of objection. So I have the blacklined proposed order which was all statements filed by a couple of parties -- contract parties. Are there other proposed changes to the order?

MR. ROBERTSON: No, Your Honor. I don't believe so.

THE COURT: Okay. So you can email that order as well as the sealing order to chambers and they will be entered.

MR. ROBERTSON: Thank you, Your Honor. At this time, I would cede the podium back to Mr. McClammy to address the preliminary injunction extension motion.

THE COURT: Okay. Very well.

MR. KAMINETZKY: Actually, Your Honor, this is Benjamin Kaminetzky, Davis Polk, and I'll be doing the preliminary injunction motion. Can you hear me okay?

THE COURT: I can hear you fine. I'm going to suggest that we change the order, though, slightly in the agenda. We had down on the agenda the ER physician class claim motion. The movant in respect to that motion yesterday filed a notice of withdrawal of the motion and it expressed a desire to participate in the mediation or reservation of rights to try to participate in the mediation, but given their withdrawal of the motion, I don't think we should keep people on the phone who were just for that. So unless I'm missing something, the withdrawal, to me, obviously move the motion and I just want to confirm that on the record before we move to the two contested matters -- the preliminary injunction and the (indiscernible) motion.

MR. KAMINETZKY: I will turn it back to Mr. McClammy for that. Go ahead.

MR. MCCLAMMY: Your Honor, this is Jim McClammy for the debtors. The debtors would agree with that, but I understand Mr. Rothstein is probably on the phone for the ER physician and if there's anything to address after speaks I would be grateful to have the opportunity to do that.

THE COURT: Okay.

MR. ROTHSTEIN: Your Honor, this is Paul Rothstein on behalf of Dr. Michael Masiowski. Just on his behalf now, we did file last night that notice of withdrawal except as

to a certain request that was contained in the original motion. So from a procedural standpoint, I feel that we preserve the issue of allowing us to participate in the mediation if the Court so deems that appropriate. We think it's appropriate for Dr. Masiowski to participate for the following reasons.

Number one, the hospital's and emergency room physicians, although a lot of people are not aware of that, are separate entities. The emergency room physicians are the frontline providers. Given the mediation report in paragraph number 7 -- and this is my second point -- given the mediation report, it indicates that right now the mediation is going into the phase of implementation. There is no better person than an emergency room physician to be able to participate directly with the Court approval in the implementation of the program.

Number three, Dr. Masiowski has been an emergency physician for more than 20 years. He has dealt with, as we indicated, opioid related conditions. He has a significant knowledge on all the issues related to abatement for opioid related conditions and having him participate in the actual implementation program would be an excellent contribution.

Now, number four as to the issues dealing with both the debtor in possession and the creditors -- unsecured creditor committee concern that this may open up a

floodgate. We disagree for a number of reasons. Our original class claim was filed in June. Nobody else has come forward to request what we're requesting as relief. And most importantly, nobody who would request relief at this point in time would be able in our perspective to be able to meet the credentials that we have, and I compare this the education context. My wife who happens to have a doctorate in education is a retired educator who has taught teachers, who has taught professors how to teach -- when she was a principal in her situation, the first frontline people were the teacher and here, the first frontline people are the ER, just as she would always be consulting with them in order to make sure that the education of the student is maximized as the teacher is the most critical role, here, the emergency room physician would play a critical role in regards to how programs are going to implemented, be able to present information in a formal way if this Court approves the participation, where we know that administrative issues are going to be dealt with independently from the hospital because the emergency room physician, Dr. Masiowski, has the knowledge and the expertise to do that.

So we don't feel it's duplicative. We don't feel that it's excessive. We don't feel that we're just a johnny come lately, given where the mediation is. The mediation had said that everything was done. The implementation was

done and so forth and so on. Obviously, we want to be here now. We're not requesting a reallocation of any resources. That was the guts of the mediation. We understand the based on when our papers were filed, we were not able to participate because we came in too late and that's why we withdrew the motion. We were convinced of that by the committee along with debtors in possession. But we feel that this narrow request is appropriate and is going to help in terms of implementing the program through this Court.

That's all I have to say.

THE COURT: Okay. Well, the withdrawal is not conditioned on my granting that request, though. Correct?

MR. ROTHSTEIN: That's correct.

THE COURT: Okay. I am not going to grant that request for the following reasons. First, the mediation or at least the allocation mediation was scheduled for a set time and in fact that time is supposed to expire under the mediation order today, the 30th September. The parties to the mediation had engaged in that mediation over months. To bring a new party into it at this point, I believe, is not appropriate. I also believe that you are misreading the mediation report which discusses and actually uses the word implementation once in paragraph 4 where the mediators state that the NAACP, whom I did, on a consensual basis, with all the parties to the mediation and with the agreement of the

mediators, weeks ago, belatedly include in the mediation as a non-claimant in the case but with its unique position in our society -- again, the mediation report states, quotes, the NAACP and the non-federal public claimants are also committed to continuing to engage regarding concerns about the equitable implementation of the abatement program in each state. This discussion has not ended and will continue.

The mediators then say that they also will continue to try to negotiate with the public school districts and will seek a resolution between the public school district and the non-federal government entities. Again, that group joined a little bit later, although, again, several weeks ago. But I think to add another party to the mediation at this point given the state of the mediation is not appropriate.

On the other hand, I will note two things. First, although your client has a self-sustaining ER practice, the hospitals also have emergency rooms and should be sensitive to the concerns of abatement in the emergency room context. Secondly, there is nothing to stop your client from coming up with a list of what he believes are improper abatement terms of procedures and suggest those to the hospital's group or the creditor's committee and if they make sense, I'm sure they get a hearing.

But I don't want to open up again to a new party of one at this point a remarkably successful and comprehensive mediation that took place over months at significant cost to the estate and that resulted in significant benefit to the estate. So I'm not by any means denigrating your client or the work that he does. I just think that he needs to make his concerns known in a different way, not in a formal mediation. And I suggest that that way be communicating with the hospital's group and the official creditor's (indiscernible).

So why don't we turn, then, back to the motion to extend the preliminary injunction.

MR. KAMINETZKY: Thank you, Your Honor. Once again, this is, if it please the Court, Benjamin Kaminetzky from Davis, Polk & Wardwell on behalf of the (indiscernible). Can you hear me clearly?

THE COURT: Yes, although I'm getting a little bit of feedback so again I'm going to ask people who are -- whose phones are not mute, put them on mute so that we don't get an echo or side noises.

MR. KAMINETZKY: So I'll address the debtor's motion to extend the preliminary injunction until March 1st, 2021.

Your Honor, three objections were filed. I think it's fair to characterize two of those objections as largely

pro forma. A third, by the self-styled ad hoc committee on accountability unfortunately requires a brief response.

That said, the debtor's position is fully set forth in its papers, including the reply brief that we filed on Monday night. I know Your Honor has read those papers carefully so I'll be keeping my opening remarks short and then end reserve the right to offer any appropriate rebuttal if necessary.

Simply put, Your Honor, the case for a preliminary injunction today is even stronger than it was when the Court last extended it in March. The preliminary injunction halted the value destructive litigation chaos race to the courthouse that had reigned through the first weeks of debtor's bankruptcy. It is the foundation for the orderly, productive, and cooperative efforts that have led to the progress made in these cases over the past year, and in particular, over the past months, and with respect to the mediation as we've discussing, over the past weeks. And the wisdom of granting the preliminary injunction has been affirmed by Chief Judge MaMahon on appeal.

Now, Your Honor, just a few of the key achievements since March 2020 when the injunction was extended. They include, number one, as we've been talking about today, a successful mediation. As the mediator's reported, the core constituencies have reached agreement in

principle that resolved in large part the critically important issue of allocation of the value of the debtor's estate, a truly monumental achievement exceeding expectations.

Two, the ongoing exhaustive information sharing. The debtors have continued to produce. They have produced millions of pages of documents and due diligence materials to key creditor constituencies and have published on the docket year another multi-hundred-page report by the debtor's special committee detailing, among other things, non-cash transfers to or for the benefit of the Sacklers.

Number three, the ongoing searching discovery of the Sacklers and their related entities. The Sacklers and associated entities have now produced over 3 million pages of discovery and discovery is continuing against them and those entities.

Number four, centralization of claims against the estate. AS Your Honor's aware, we successfully completed the debtor's unprecedented noticing plan which resulted in the filing of approximately 613,000 claims against the estate. In addition, there's the ongoing compliance with the voluntary injunction under the supervision of the monitor. The debtors and their professionals continue to work diligently to address observations and recommendations contained the monitor's recent reports.

Number six, continued engagement with key constituencies on post-emergent corporate and governance structures to enable the timely filing of a consensual plan of reorganization. And finally, significant progress on many other important initiatives including securing court approval to fund HRT's development of the low-cost, over-the-counter naloxone opioid overdose rescue medication that has the potential to save many, many lives.

Now all of the immense and hard-won progress so far, quite frankly, would likely have impossible with the protection afforded by the preliminary injunction. It is injunction that steered and focused parties with vastly divergent interests towards a value maximizing consensual resolution of the debtor's Chapter 11 cases. And extension of the injunction is now critical to bring this thing home, to providing the space necessary for all parties and interests to work to bring these cases to a successful conclusion. Hard work surely lays ahead but there can no doubt at this point that this work can be accomplished only under the continued protection of an extended preliminary injunction.

Now perhaps the most telling proof of this Court's wisdom in entering the initial preliminary injunction last year and extending it in March is that the claimants continues to be largely in agreement that the preliminary

injunction should be extended today. No one -- no one -- has objected to the continuation of the preliminary injunction with respect to the debtors.

No one has objected to the continuation of the preliminary injunction with respect to any of the related parties except for certain members of the Sackler family. And the vast majority of parties and interests have not objected to the extension of injunction even as to those members of the Sackler families. This broad consensus is no doubt a reflection of the significant time and resources that the debtors and many other estate constituencies have invested in recent months to lay the foundation for success of these Chapter 11 cases.

Now, Your Honor, I'd like to turn then briefly to the three objections that have been filed which in my view are just as powerful on indicator of the continuing wisdom of the injunction. First, the Tennessee plaintiffs filed a pro forma objection to the continued injunction of their claims against one member of the Sackler family and that's Dr. Richard Sackler. These plaintiffs Your Honor will recall have objected to the injunction twice before, including on jurisdictional grounds. The Tennessee plaintiffs appealed Your Honor's injunction orders. Chief Judge McMahon rejected their arguments and confirmed in a nearly 40-page opinion back in August.

In their short objection, they concede that it is, in their words, quote, a virtual certainty, unquote, that this Court will grant debtor's motion to extend and have also laid their right to present argument at the hearing. In light of that, I'm going to simply move on to the next objection.

Now, the second objection was that of the non-consenting states. They filed a two-page limited objection to the injunction insofar as it bars them from litigating against nine members of the Sackler families. In that pleading, they also objected to the debtor's proposed order which allowed any party complying with the injunction to move in December to shorten the injunction as to members of the Sackler families. The non-consenting states proposed an alternative offramp structure for the members of their group.

As (indiscernible) matter, Your Honor, I'm happy to report that the non-consenting states objection to the form of order has been resolved through discussion and certain revisions to the proposed order. The revised proposed order is attached to my reply declaration as Exhibit A and we've included a blackline of that order as Exhibit B.

The revised proposed order permits those parties who are bound of are voluntarily abiding by the preliminary

injunction to move in either December or January to terminate or shorten the injunction with respect to members of the Sackler families. The debtors and it appears most of the parties and interests believe that the injunction through March 1, 2021, is fully justified and should be entered, but this agreed upon procedure provides an efficient and appropriate mechanism for raising particularized concerns a party might have with continuing the injunction as to those certain Sacklers and an opportunity for the debtors and others to respond to address any concerns as appropriate before the Court reevaluates whether an injunction should continue.

Now, with respect to their objection to extending the preliminary injunction for the nine Sacklers, the non-consenting states simply reiterate through incorporation by reference the arguments they advanced in prior briefing and assert that the preliminary injunction, quote, interferes with enforcement of state law and harms the public, unquote. This Court of course has already carefully weighed and rejected these arguments multiple time over.

The non-consenting state have all but conceded that a continuation of the injunction in its current form is appropriate and essential to success of these cases. The non-consenting states do not grapple with the arguments and evidence the debtors advance in their moving briefs. Again,

it's a four-page pleading and they merely incorporate by reference. They do not dispute the preliminary injunction provided the space necessary for key estate constituencies, including themselves -- the non-consenting states -- to obtain extensive discovery from the Sacklers and their affiliate entities.

Finally, and this is most telling, the non-consenting states do not dispute that an extended preliminary injunction covering the nine Sacklers will be critical to enabling negotiations and resolution of the amount and contours of the Sackler contribution to the debtor's estates. It simply is inconceivable that productive discussions with the Sacklers on this critical, perhaps last, issue can occur with the noise and disruption and race to the court that the preliminary injunction has prevented. For all of the reasons, the non-consenting states objection should be overruled.

Finally, the objection of the so-called ad hoc committee on accountability. The debtors were frankly taken aback by this filing and it's hard to know where to begin. As best as the debtors can tell, the ad hoc committee on accountability which first appeared in these cases in May 2020 and represent five persons, none of the whom the debtors, based on the records, believe have ever actually sued the Sacklers demand that the preliminary injunction be

modified as to permit an identified and amorphous, quote, credible and public test of the Sacklers' allegations, unquote.

Although admittedly unclear, I assume that this means what they're looking for is allowing certain civil litigation through trial of some sort of claims against members of the Sackler family. Their arguments are largely untethered to the applicable legal standards. To the extent they actually do address the elements of the preliminary injunction standard, such as the likelihood of successful organization, the objection makes a series of arguments attacking -- what seem to be attacking or making objections to a plan of reorganization that hasn't been filed yet.

These arguments are wrong and utterly irrelevant to the question before the Court today. There is no plan on file and indeed, negotiation among the parties, including members of the Sackler families, must continue before any plan could be filed. As the district courts head, the very fact that settlement discussions are continuing provides support for the finding that continuing the injunction increases the likelihood of a successful reorganization. And that was a quote from page 16 of Judge McMahon's opinion. And this is plainly satisfied here. The ad hoc committee on accountability does not address and thus concedes irreparable harm and the balance of equities,

prongs to the preliminary injunction standard.

Finally, the remainder of their objection evinces a basic lack of familiarity with what has transpired in these Chapter 11 cases, recycles inflammatory arguments that have been advanced and rejected repeatedly in the past, and goes so far as to disparage this Court and its motives. To be honest, we really didn't know what to do with all of that and we would perhaps have preferred to just let the objection or this part of the objection stand and fall on its own. But the debtors as stewards of this reorganization recognize and deeply appreciate that confidence and accurate information regarding the conduct of these Chapter 11 cases is important. For that reason, the debtors attempted in their reply brief to set the record straight with respect to many, although by no means all, of the outright falsehoods contained in the ad hoc committee of accountability's objection.

Now, just a subset for today, Your Honor. The ad hoc committee on accountability argues that the reason the preliminary injunction protects the Sacklers is -- and this is quote -- because they are billionaires and they argue that there is strong and growing public concern that these cases are going run not for the benefit of the creditors or the public but instead for the Sacklers. The debtors have proved time and time again that this is utterly and

absolutely false. The debtors sought the preliminary injunction and this Court granted the preliminary injunction to maximize value and protect the debtors, these Chapter 11 cases, and all parties and interests.

The preliminary injunction was not sought or entered to shield members of the Sackler families from anything. From day one, the debtors in conjunction with key constituencies have worked extremely hard to preserve potentially billions of dollars in value that can be put to productive use ameliorating the opioid crisis, and the simple proof of the fact that the preliminary injunction is intended to protect the debtors, not the Sacklers, is that many parties who have no interest in protecting the Sacklers, just the opposite, such as the unsecured creditors committee, continued to support the injunction.

They also claim that the preliminary injunction in these cases have prevented estate constituencies from getting answers that the justice system would otherwise provide, and again, I'm quoting, at official committee of victim representative or an individual examiner is required, quote, to hold the Sacklers accountable. These assertions are also just plain wrong. Put simply, these Chapter 11 cases have facilitated information sharing in a way that no civil litigation in diaspora throughout the country could do or have ever done.

The Sacklers and their associated entities, for example, have already produced about a half-a-million documents totally 3 million pages in these cases alone. Thus, the suggestion that another committee or an independent examiner is somehow necessary in these cases is almost offensive to the numerous parties, the debtors, the UCC, and many state's attorney generals in both the consenting and non-consenting states who have been working for many, many months and have invested tens of million of dollars and countless of hours analyzing, assessing, and looking at potential claims against the Sacklers and evaluating information relevant to any third-party release that may be included in an ultimate plan of reorganization.

And finally, the argument that a public trial is necessary to find, quote, answers or to be transparent has been rejected multiple times for good reason. First, the proof is what has happened in this case to date. The parties have obtained in discovery these cases much more than they could have obtained in civil litigation. Ending the injunction and restarting the civil litigation would actually be a huge step backwards in transparency and accountability.

Second, as this Court has recognized, it hardly follows that the outcome of a public trial will resoundingly be accepted as, quote, the truth. Your Honor pointed to the

Triangle Shirtwaist Factory fire trial and the Chicago Black Socks trial as examples, and I'm sure we can think of highly public and frankly highly political trials where reasonable people continued to disagree about whether the verdict was correct or just.

And third, the outcome of a trial is always uncertain, as Your Honor also notes last year. Injunction preserves the estate value by allowing the parties to continue to conduct discovery regarding estate or other claims against the Sacklers and continued to explore the parties can reach a largely consensual negotiated resolution of such claims.

I will address just one other assertion. The ad hoc committee on accountability says that -- and this is a quote -- it appears that the Court has placed a thumb on the scale in favor of the Sacklers. This assertion is absolutely false and inappropriate. Far from placing a thumb on the scale in favor of the Sacklers, the Court has repeatedly emphasized that the Sacklers are not getting a free pass in these Chapter 11 cases. The Court has also made clear the expectation that the debtors, UCC, and others will be doing the utmost to maximize the value of the debtor's estates and distribute and agree on a reasonable allocation of how it is to be distributed. That's a quote from Your Honor from the March 18th hearing. The debtors

correct a number of other mischaracterization or outright falsehood as to the Court's observation and ruling their reply brief.

Let me conclude where I began. All of the success I have mentioned have been made possible in large part by the wrested from the value destruction litigation free-for-all afforded by the preliminary injunction. These cases, however, are now entering what will likely prove to be decisive phase. There's absolutely no reason today to alter what has been the status quo for a year now and every reason to keep the injunction in place through March 1st, 2021.

With that, unless the Court has any questions, I'm happy to turn the podium over. I'm not sure -- Your Honor, who would you like to hear from next? Would it be those supporting the injunction or would it be Mr. Troop?

THE COURT: I think it probably makes sense to hear from the non-consenting states depending on -- and then the other objector -- depending on how that goes. I'm happy to hear from those who support the injunction in reply, but I think I should hear from the objectors at this time.

MR. TROOP: Thank you, Your Honor. This is Andrew Troop from Pillsbury, Winthrop, Shaw, Pittman. Your Honor, I am relegated to my cell today so I hope that you're able to hear me clearly.

THE COURT: You're coming through clearly.

Thanks.

MR. TROOP: Thank you, Your Honor. Your Honor, I find it interesting, at best, that the non-consenting states get hoisted by Mr. Kaminetzky for being efficient and focused in connection with both this case.

The bottom line when you strip everything away from Mr. Kaminetzky's position and arguments is that there is a strong belief by the debtors that it is impossible vis-à-vis the Sacklers for other parties and interests and frankly the Sacklers to walk and chew gum at the same time. And they draw the conclusion that, but for the cessation of litigation, there would have not been or could not have been success, progress -- pick whatever word Mr. Kaminetzky used -- in terms of where we've gotten today.

Almost a year ago, Your Honor, you and I have a colloquy about the effect of the obligation of parties and interests to participate in good faith in the Chapter 11 process. And I told you then and I tell you now, that the non-consenting states would have and will continue to do so and would have will, continue to do so whether or not there is litigation proceeding against the Sacklers in recognition of the particular interests of state's sovereigns with regard to the advancement, protection, prosecution of their state laws.

I've recognized, Your Honor, that the results of

doing so are uncertain, but as I've said before, the value from doing so is not merely economic, and it is reflective of the responsibility that states have to their citizens with regard to their own laws, their own police power actions, and the like. And those arguments, Your Honor, are primarily legal arguments. They are arguments that we have briefed before and there was no reason to burden anyone -- although in this virtual world, I can't say the trees that would have killed to do so -- but with the hundreds of pages of briefing that has been carried before.

The issue raised by Mr. Kaminetzky with regard to the side-by-side discovery that is going on in the Chapter 11 cases with regard to the Sacklers. I note only the following, Your Honor, which is that their process vis-à-vis the Sacklers and as you -- you may not have read them yet. I wouldn't expect you to -- but the motions that were filed last night by the creditor's committee with regard to a variety of objections, exceptions, privileges being asserted, not only vis-à-vis by the Sacklers but in this case the debtors with regard to discovery demonstrates that that process is not an easy one or one that is even close to done. And it's one that is not going to be easily completed. I simply note that since an understanding was reached about the next phase of mediation with the Sacklers, somewhere between four or six scheduled depositions by

Sackler-side deponents have -- we've received notice that they can no longer go forward in the next month and they need to continued.

So the power of continued litigation is, in my opinion as I've expressed before, clear, but being realistic, Your Honor, which is what I think you above -- I won't say above all else -- but equally have cautioned and urged all of us to be in connection with our approach to litigating issue before you, did result in our engagement as Mr. Kaminetzky reported, talking specifically about the mechanics that have been set in place for the continuation of voluntary compliance not enjoined compliance by the non-consenting states and potentially others and we have in that regard, reached an acceptable understanding with the debtors, demonstrating, I think, precisely, Your Honor, that the non-consenting states absolutely can walk and chew gum at the same time.

So, Your Honor, I could go into more detail but I think the points are clear. The idea that we would object and preserve our objections in connection with the request also was not a possibility. Our objections are preserved. Our ability to appeal is preserved should we exercise the offramps. And we have, as we did back in March, recognized the -- and accepted -- the length of the extension on a voluntary basis, vis-à-vis the debtors, and have focused in

on the Sacklers who are a different category of issues, concerns and, frankly, Your Honor, could be separated from the debtor's reorganization plans and still provide for a fruitful discussion with the debtors on their own reorganization.

So, Your Honor, unless you have any specific questions for me, that's all I have today.

THE COURT: Okay. Thank you. Okay.

MR. QUINN: Your Honor --

THE COURT: Why don't I hear from Mr. Quinn, I think it is.

MR. QUINN: Thank you, Your Honor. Good morning. This is Michael of Quinn of Eisenberg and Baum for the ad hoc committee on accountability.

In listening to the debtors speak -- I'm a bit remiss in saying it -- but it made me think of a quote from Ronald Reagan. Trust but verify. In its current form, the debtors have failed to sustain their burden to establish that the preliminary injunction promotes reorganization and the public interest. Unless the debtors can propose a mechanism to provide a public and credible test of the Sackler allegations, the preliminary injunction to be modified for the following two reasons.

First, because there will be public or credible way to test the allegations against the Sacklers, it's not

clear how any disclosure statement can satisfy the adequate information standard of Section 1125 or that the plan can satisfy the best interest of creditor's test of 1129. All of the negotiations and discovery that the debtor talked about -- the millions of documents, the depositions -- made be laudable but it's entirely beside the point. They are done in secret and in great part focus on questions about estate claims and the Sackler's credit worthiness, none of which are at issue here.

We're not saying, too, as the debtor suggests that full trials or more examiners or yet another committee is necessary to this case. We brought them up as examples that -- as ways that other courts have addressed our concerns in other mass tort cases. Regardless, it's tough pill to swallow to say that we stand by and wait patiently for a plan in order to receive information on the Sackler allegations. Based on the current schedule --

THE COURT: Isn't that what normally happens in Chapter 11 cases when there are significant settlements being negotiated?

MR. QUINN: Well, the issue, Your Honor, is that this isn't a normal Chapter 11 case.

THE COURT: Well, how else would one do it? I mean, that is the mechanism in Chapter 11 and in fact that is what a disclosure statement and a 9019 motion are for.

That --

MR. QUINN: Your Honor, we're going to welcome -- excuse me, Your Honor. We will welcome a disclosure statement. Our issue is being able to verify the disclosure statement and we're -- all we're hoping --

THE COURT: You have the ability to take discovery in the context of a motion for approval in this voter statement or a request for confirmation of a plan. That's -- those are both contested matters that you have a right to take discovery on if you want to.

MR. QUINN: Well, I appreciate, Your Honor, and we'll reserve our right to do that in the --

THE COURT: Well, what you said earlier suggests that you didn't understand that so I wanted to make clear you have that right.

MR. QUINN: Thank you.

THE COURT: Okay.

MR. QUINN: May I continue?

THE COURT: Go ahead.

MR. QUINN: Based on the current schedule, we recognize that a plan is due shortly. We are not to try to disrupt this schedule. We do, however, question whether parties can complete discovery, analyze that discovery, and negotiate a resolution based on that analysis in such a short period of time.

Additionally, any preliminary injunction that makes it impossible to have a public and credible test to the Sackler allegations cannot be in public interests. We certainly appreciate that in the debtor's reply they've clarified the current injunction applies only the civil cases. The form of order they submitted, however, is not so limited. It provides that the Court will enjoin the governmental defendants and private defendants from commencement or continuation of their active judicial administrative or other actions or proceedings and that commencement or continuation of other actions alleging substantially similar facts or cause of action. We take the debtor's replay to mean that they will submit a revised and corrected order to this Court that specifically shows that these are -- this injunction is related only to civil claims.

This clarification -- and we appreciate it -- hardly addresses the core public interest concern here which is there's a -- that the preliminary injunction in its current form makes it impossible for -- to be transparent about Sackler allegations in any legally actionable way. We understand that the Sackler firmly dispute having any liability. We also know that they've lost two motions to dismiss. We're not here today, Your Honor, to address whether the Sacklers are liable, only that there will never

be a true way for anyone other than the small group of insiders to this case to know the truth.

Thank you, Your Honor.

THE COURT: Can I interrupt you there? You understand --

MR. QUINN: Sure.

THE COURT: -- that what you refer to as the small group of insiders include the attorney generals from 48 states, representatives of thousands of governmental entities, and a official creditors committee. It's broadly based.

MR. QUINN: Yes, Your Honor, and I appreciate the hard work that each of these groups is doing, and I no doubt respect of these groups, however, my issue is that there's no information to personal injury, wrongful death-type creditors to evaluate these claims.

THE COURT: You understand that thousands of personal injury claimants engaged in the mediation through several capable lawyers and law firms?

MR. QUINN: Yes, Your Honor, I do understand that. And as I believe the creditors committee approached me and asked if I would sign the voluntary confidential order -- I don't think those clients or their representatives will be able to get the information either. I think their lawyers are able to -- it's like for the lawyers to be able to see,

but they can't transmit that information to creditors to actually vote whether to -- you know, to confirm the plan.

THE COURT: do you have anything more to say? You can continue.

MR. QUINN: Well, I think that's it, Your Honor. I appreciate it.

THE COURT: Okay. Very well. So I don't know if anyone else has anything to say on this. Mr. Kaminetzky, I don't know if you want to respond.

MR. JOSEPH: Well, Your Honor -- this is Gregory Joseph. May I just respond briefly to a couple of points that were made in the argument?

THE COURT: Okay.

MR. JOSEPH: Mr. Troop mistakenly said that there are four to six depositions that are not going forward in the next month. The fact is that I'm aware of -- that for three of the five, all have been offered dates in October. One of the witnesses had a stroke and was delayed by a month. Another's a medical family issue for counsel, but everything is still going forward quickly.

The last lawyer's suggestion that depositions do not address all claims and they're focused on issues like location of assets is false. Three of our depositions have been taken, starting in August, two on the A side have been taken. The non-consenting states question all those and

both the UCC and non-consenting states go into what the last lawyer would refer as the merits of the case.

Thank you, Your Honor. I just wanted to make sure the factual record was clear.

THE COURT: Okay.

MR. KAMINETZKY: Your Honor, very briefly. This is Ben Kaminetzky in from Davis Polk. Just a few points. Just with respect to Mr. Troop's comments about walking and chewing gum at the same time, Mr. Troop did not say that -- and did not deny -- that more discovery has happened here than could ever have possibly had in connection with any amount of civil litigation. He also, Your Honor -- I mean, just logic dictates that it's extraordinarily unlikely that the Sacklers would continue to provide the diligence that they're providing in these case while litigating against the -- you know, the non-consenting states, and, clearly, when the non-consenting states have -- the stay would be lifted with respect to them, the consenting states would also have to jump in. It's extraordinarily unlikely that having 50 state litigations or 48 state litigations against the Sacklers wouldn't delay, perhaps for a significant amount of time if not year or decades, the resolution of these Chapter 11 cases.

What's more, Your Honor, once this (indiscernible) of litigation, as Your Honor knows, 2004 discovery is no

longer appropriate so that would all grind to a halt which is the information sharing mechanism that's being employed in this case.

Clearly, the -- again, just to underscore, the amount of information that's being provided in this case -- not only the amount but the type of information that's being provided by the Sacklers in these cases is extraordinary and could never by provided in civil litigation. Just, for example, the Sacklers are offering discovery and have given discovery about the nature of their wealth, the nature of their assets overseas. We even had a deposition in Australia. None of that could possibly ever happen in civil litigation. And one final point, Your Honor, is that all of -- we've talked a lot about the mediation and about the term sheets. Your Honor will note that all of the term sheets, all of the individual deals that were struck with the private side are all contingent upon a final deal with the Sacklers and Sackler participation.

It is just certain -- simply incredible to believe that renewed litigation by the entire country of -- by the attorney generals of all the states -- wouldn't severely, severely undermine, if not completely kill, those deals that we have and set us back to square one with respect to the private sides.

Finally, let me just turn to the ad hoc committee.

I'm not quite sure what to say because it doesn't seem like any of what they're talking about has anything to do with the preliminary injunction. It seems like they're launching a objection to a disclosure statement that hasn't been released, plan that hasn't been proposed, and actually, what they're mostly talking about is they're trying to mount a belated objection to the protective order that was entered in this case.

I'm not quite sure what they envision, but to -- they seem to conceive of a situation where discovery and litigation is not done by professionals and is not done by the UCC, the non-consenting states, and all of the groups here that are involved and inside the protective order and have worked diligently for hundreds of thousands of hours and for -- costing millions of dollars to these states -- but somehow that the entire world should be privy to every deposition, to every document that's been produced. It's just simply not the way things work.

It couldn't work that way. And the attempt to somehow disparage the work of the UCC and the attorney generals and to suggest that the Sacklers are getting some sort of free pass, and absent them being satisfied at the pace of discovery and them being satisfied by seeing absolutely every document or deposition that has been produced in this case, is simply inconceivable.

So with that, Your Honor, I will pause.

THE COURT: Okay.

MR. ECKSTEIN: Your Honor?

MAN: Go ahead, Ken. Sorry, (indiscernible).

MR. ECKSTEIN: No problem. No problem. Your Honor, this is Ken Eckstein of Kramer, Levin. If it's appropriate, I can -- I have some brief remarks I'd like to make on this motion.

THE COURT: Okay. And you should just state who you're on behalf of for the record.

MR. ECKSTEIN: Sure, Your Honor, yes. Your Honor, this is Kenneth Eckstein of Kramer, Levin. I'm appearing on behalf of the ad hoc committee of consenting states and governmental entities.

Your Honor, first, I would like to -- you know, in connection with our support of the motion, I do want to acknowledge the remarkable progress that has been achieved in the case to date and that was described in detail by Mr. Huebner and describe by Mr. Kaminetzky. The progress to date in fact has been extraordinary and we're pleased that it implements many of the key elements of the term sheet that the ad hoc committee had agreed to at the outset of this case. And we're hopeful that it will be the foundation for, ultimately, reaching a successful and consensual plan in this case.

We do think that in light of the progress that has made and in light of the process that the Court has put into place, both with respect to active and expedited litigation that is ongoing in the bankruptcy case, as well as the ongoing mediation process that the Court has recently endorsed, we think that there is good reason to continue to have confidence that we have a framework that ultimately will lead to a successful and near-term plan of reorganization.

As Mr. Kaminetzky said, the agreements that were reached in the mediation all specifically do contemplate that an ultimate agreement with the Sacklers needs to be a component of a plan of reorganization and we're very mindful of the fact that the time is now to address that issue while the discovery continues actively in the case. We're also mindful of that fact that the proposed order contemplates the opportunity for an offramp on December 15th, if parties believe that that is appropriate. And we believe that that is significant, particularly in light of the expressed intention by the debtor to propose plan before the end of this year. And we think that the deadlines that have been provided for are consistent with the goal of presenting a plan expeditiously and for the issues with respect to the Sacklers' contribution to this case to ultimately be fully addressed and hopefully resolved within the time frames that

all parties have specifically targeted.

So based upon those factors, the ad hoc committee is supportive of the debtor's request to extend the injunction. Thank you, Your Honor.

THE COURT: Okay.

MR. PREIS: Your Honor, this is Arik Preis from Akin, Gump on behalf of the creditors committee. May I be heard?

THE COURT: Sure. Good morning.

MR. PREIS: First of all, can you hear me?

THE COURT: Yes, I can hear you fine. Thank you.

MR. PREIS: Thank you. Your Honor, again, Arik Preis from Akin, Gump, Strauss, Hauer & Feld on behalf on the creditors committee. I'll be very brief.

As you know, we support the relief -- request for the preliminary injunction motion. The underlying reason for us doing so has not really changed since the beginning of the case. I'm not going to reiterate all of the reasons that we supported it at the beginning of the case. We further support the amended proposed form of order. We think those changes actually make the order better.

To be clear, however, we do not endorse for agree with some of the statements that the debtors made in the preliminary injunction motion, in their reply brief, or in Mr. Kaminetzky's statements earlier regarding, among other

things, discovery. We hope that that's evident by the two motions we filed last night that Mr. Troop alluded to. We note that the ad hoc group of accountability made some statements as well. To the extent that their statements in some way are read to mean that we are not doing our job, which frankly includes thing that we know that they're interested because we've had conversations with them, we obviously disagree.

Finally, Your Honor, there was some colloquy about the schedule regarding five depositions. Mr. Troop mentioned something about that and Mr. Joseph attempted to create -- to correct the record. I feel the need because we were going to raise this with you in another context just to briefly, if you're okay with that, just correct a little bit about what was said and explain to you why this -- why Mr. Troop raised it because it does deal with the discovery that Mr. Kaminetzky had been talking about.

Specifically, we were all in your chambers on September 17. There has been eight business days since then and since that day, five deponents who had previously agreed to and were offered dates for depositions have told us that they're no longer available on the dates previously agreed or offered, but instead, they either asked to delay their deposition for a week or a number of weeks or in one instance, not even offered up certain dates in the future.

In one instance, as Mr. Joseph correctly point out, it's due to a health issue of the deponent. In one instance, it's due to the health of the father of the lawyer who is preparing the deponent. In one instance, it's due to the deponent's position that he doesn't want to sit for a deposition while a privilege's motion is pending. And in two instances, the individual simply didn't give a reason.

We're raising this, Your Honor, as we do with a lot of things in this case when various issues come up because, frankly, we hope the trend doesn't continue, but if it does, we're going to be back to Your Honor seeking Your Honor's assistance. I know that doesn't really relate to the preliminary injunction motion, but it does relate in general to the discovery efforts that Mr. Kaminetzky was talking about and that Mr. Troop and Mr. Joseph alluded to.

But again, to round out to where I started, the creditors committee does support the relief requested in the preliminary injunction motion. Thank you, Your Honor.

THE COURT: Okay. Thanks. Does anyone else wish to speak? All right. I have before me the debtor's motion to continue the preliminary injunction entered in the early stages of this case into March of 2021 with an opportunity to have second look or has a couple of parties on the phone have said a potential offramp to be heard by the Court in January with a notice to be filed in December.

This is clearly a subject that the Court has dealt with before in this case. In fact, I have had now four hearings on the topic, the first being on October 11, 2019; second, on November 6, 2019; the third, March 18th, 2020; and then today's hearing. Obviously, there was a lot more time spent on the record, when one reviews the transcripts, at the earlier hearings. The underlying bases of the arguments were more thoroughly set forth, but I rereviewed all of those transcripts and the briefing in connection with them, as well as the briefing for today. In particular, because two of the objectors -- the Tennessee parties and the ad hoc committee of non-consenting states -- have in essence incorporated their arguments from the prior hearings and their present objections.

I agree with Mr. Troop who represents the non-consenting state group that in doing so, neither they or I in considering their arguments belittle the importance of these issues or the extent of the record upon which we are all relying, going back to October of 2019. These are important issues and need care in their analysis.

I also agree with Mr. Troop, as was I think implicit in my remarks about the mediator's report that was filed last week, that it appears clear to me that now and during the course of these cases, these clients have engaged in these matters in good faith, including in negotiating

towards a Chapter 11 plan in these cases, and keeping open the possibility that that plan would include a material payment by members of the Sackler family, another consideration provided by them.

I will address first the objections that relate back to arguments previously made in these cases, namely the Tennessee parties, and the non-consenting ad hoc state committee. The standard here for issuing the preliminary injunction is clear and has been clearly stated in these cases. The debtor has the burden of establishing four factors where third parties are be to enjoined and furtherance of their reorganization effort.

First, as with any preliminary injunction, they need to show a likelihood of irreparable harm to them if the injunction is not issued. However, irreparable harm in this context is demonstrated if the actions to be enjoined would embarrass or delay or otherwise impede the debtor's estate and reorganization prospects as noted by Chief Judge -- that is, District Judge -- McMahon in Dunaway v Purdue Pharma, LP, 2020, U.S. District Lexus 143799, SDNY August 11th, 2020. See also, In re Lyondell Chemical Flow, 2 B.R. 571, 590 through 91, Bankruptcy SDNY 2009.

The second circuit is noted that Section 105(a) which is the statutory basis for such an injunction is to be, quote, construed literally to enjoin suits that might

impede the reorganization process, close quote, Lautenberg Foundation v Pickard, 512 to that appendix 18, 2nd Circ. 2013, citing MacArthur Company v Johns-Manville Corp., 837 F2nd, 89-93, 2nd Circ., 1988. That literal construction reflects the underlying principle of preserving the debtor's estate for the creditors and funneling claims to one proceeding in the bankruptcy court, ibid. at 94.

In other cases, the circuit has held that such an injunction is properly used to enjoin creditors' lawsuit against third parties where, quote, the injunction plays an important part of the debtor's reorganization plan, close quote, FCC v Drexel Burnham Lambert Group, Inc., 960 F2nd 285-293, 2nd Circ., 1992 or where the action to be enjoined, quote, will have an immediate adverse economic consequence for the debtor's estate, close quote. That's now Justice Sotomayor writing in Queenie Limited v Nygard, International, 321 F3rd, 282-287, 2nd Circ., 2003.

Having reviewed an extensive record in the fall of last year as well in March of this year, I believe the debtors then established and the record even more so supports today, a preliminary injunction of the third-party, non-criminal claims against the parties covered by the proposed extension of the preliminary injunction, including as objected to by the Tennessee parties, Dr. Richard Sackler and is object to by the ad hoc committee of non-consenting

states, the nine Sackler family members, including Richard Sackler. Those parties not objecting otherwise to the injunction.

The two objectors' arguments essentially come down to a view that, notwithstanding the irreparable harm generally to these estates and the reorganization prospect of permitting the lawsuits to go forward that the injunction seeks to continue to enjoin, that progress and that harm will not take -- can still take place and the harm will not occur if just the litigation is permitted to proceed against Richard Sackler and as far as the non-consenting states are occurred, the other nine Sacklers as well.

I dealt with this primarily in the March hearing and I continue to believe there what I believe -- to believe now what I believed then, which is that the proposed carve-outs from the injunction would be highly detrimental to the debtor's estates and the prospect of a confirmable Chapter 11 plan here without unduly harming the governmental entities. As I noted than and continue to believe now, first, the pursuit of the litigation that the Tennessee and non-consenting states seek necessarily would also involve the debtors and therefore, sidetrack no only negotiations with the Sacklers, but also involve the debtors materially in such litigation.

And secondly and perhaps even more importantly,

because those claims are similar to those brought by other governmental entities, it is clear to me that those other governmental entities would want to pursue their litigation as well and my not letting them do that would put them at a disadvantage, in terms of timing on litigation outcomes, as well as negotiation leverage in negotiations with the Sacklers if I let the non-consenting states pursue their matters.

Going back to the first point, it is and has been clear to me since the October 2019 hearing the case that the multi-jurisdictional, thousands of lawsuits, state of play without this injunction is not beneficial to these debtors and to their estates and creditors. It would result first in multiplication of costs and discovery as well as a limitation of the type of discovery that is available and in place and going forward in this case before me. Discovery that has been agreed by the Sacklers in well-negotiated orders in which not only the official creditors committee but also the non-consenting states had a major role; discovery under bankruptcy 2004 which would not available in non-bankruptcy proceedings; discovery that is well underway and being supervised by me and that will continue.

Moreover, it is a clear public interest that litigation, if possible, be resolved promptly, efficiently, and by consensus. From the Supreme Court, the Second

Circuit to the most local court, that is a fundamental proposition of our law. Experienced litigators and certainly judges know that when parties control litigation outcome by well-informed negotiations that lead to agreements, the legal system is working. They know that trials are just that -- matters that result in an outcome of either liable or not liable. They are not some form of public truth serum. No litigator would tell you otherwise.

So it appears to me that while I agree again with Mr. Troop that the debtors could confirm a plan in these cases that did not have a substantial contribution by the Sacklers, it appears to me to have always been the case and will continue to be the case that such a plan in which they do make a material contribution that satisfies the second circuit's test in In re Metromedia Fiberwork, Inc., 460 F3rd, 136, 2nd Circ., 2005, is not only possible but the most likely outcome in this case.

I recognize that the Tennessee counties and the ad hoc committee of non-consenting states do indeed have an obligation to their citizens to seek to enforce their laws, but I'm sure they recognize, being lawyers, that that obligation is frequently, if not indeed usually, embodied in a negotiation process rather than a litigation process. I have concluded and continue to believe that the continuation of the injunction as proposed furthers that process and that

to limit it as suggested would cause irreparable harm to the estates and creditors and prospect for a successful reorganization.

The remarkable achievement by the parties, including the non-ad hoc -- I'm sorry -- including the ad hoc committee of non-consenting states in resolving as set for the mediator's report, the allocation of value in these cases among creditors, only enhances or increases my view that the injunction as proposed should be granted.

The settlements outlined in the mediator's report are truly a gatekeeping item. They recognize the importance of a plan that does resolve claims against and a contribution by the Sacklers. They also continue the focus of these cases on abatement and using the debtors' resources, including their claims against the Sacklers and third parties' right against the Sacklers, to resolve as promptly, efficiently, and with as much value as possible, the opioid crisis.

The balance of the harms here also tilts in favor of the debtors, the second of the analysis. It is far from clear to me -- in fact, it would not be the case that if I carved these particular people out of the preliminary injunction and left it at that and no other state or governmental entity would say, me too, which I highly doubt -- but if that were the case and it was just limited to

proceeding against nine people in Tennessee and up to 24 other states, I do not believe there would be meaningful outcome within the period where the parties are pursuing in good faith a potential negotiated resolution of those claims for the collective creditor body.

I will need to recognize that that collective creditor body, as I've said many times before, could be almost every person in the United States, given the claims that have filed, including claims filed by hospitals, states, governmental entities and the like.

I know Mr. Troop -- at least maybe just to butter me up -- enjoys movie references. Having read the mediator's report, the image of James Dean telling the lettuce to grow in East of Eden came to my mind. The parties have an incredible opportunity at this moment to move forward quickly to end these cases and get the money out to abate the opioid crisis. They should do it. And anything that distracts them from that process is not worth the candle. They need to make that effort and they are making that effort and I encourage them to continue it.

It is clear to me that the public interest favors that effort, not just the public interest generally in settlements, but in getting the value out where it's needed most which I believe all of the parties who have objected today understand and will do their best to ensure. That,

too, is even more important today as we read time and time again that the pandemic has hurt those trying to overcome their addictions more than most.

I will note that I am fully aware of the discovery process that has been unfolding in this case. It is clear to me that an immense amount of disclosure has occurred -- over 5 million pages, hundreds of thousands of documents, depositions, et cetera, and it will continue to occur. I will note further that both sides on the discovery process -- that is the Sackler side and the committee and other party and interest side on the other hand -- have engaged so far in that process professionally and efficiently. Notwithstanding airing discovery issues with me, I have yet to have to rule on any beyond simply giving guidance to the parties. I have made it clear -- crystal clear -- that the Sacklers will continue to have to provide disclosure in these cases if they expect to get a release.

They obviously have rights including basic rights in respect to privilege and the like and I don't require them to waive privilege. But on the other hand, I don't expect them or third parties in the case who are also targets of discovery to unduly or improperly delay any of that discovery. I also expect the parties to negotiate, now that we're in this important and critical second phase of the case.

Clearly, this case more than most, but all Chapter 11 cases really are collective proceedings. There will always be holdouts in collective proceedings. They have a right, if Congress has circumscribed to do so. That right includes disclosure so that they can understand what a plan and disclosure statement are about. They have a right on a limited basis, or depending on their willingness to participate and engage in well-recognized procedures for participating, to engage in a less-limited basis -- I'm sorry -- a more full basis in a case.

Clearly, here, that collective principle exists in spades. We have had an extremely active and well represented and thoughtful official Creditors' Committee. Then we have every state in the union that has not already settled with the Sacklers intimately involved in these cases.

And we have thousands of other governmental entities, as well as hundreds, and in some cases thousands, of third parties who have banded together to make their views known and have also engaged thoughtfully and in good faith in the case, including with respect to the private claimants, other than saying they want to have a resolution with the Sacklers, not looking to the Sacklers for value. A remarkable result in return for what they did negotiate and receives in the mediation.

So it is clear to me that the public interest is also served by continuation of the preliminary injunction, including in respect of the nine people, that the two governmental groups would have the carveout.

As far as the group of five personal injury creditors who have also objected, much of what I said applies to their objection as well. The objection is premised on the objectors' belief that there, "needs to be a public and credible test of claims against the Sacklers."

During oral argument, counsel for that group appears to have walked back from the notion that such a public and credible test would be some sort of test litigation, in which it appears from the objection the group itself would not participate in, but would want other parties to bring and fund, or the appointment of an examiner.

I will note that either of those two options rightly makes little sense in this context. Where you have an extremely active group of creditors with an extremely broad base, there's no reason to have a third-party examiner, who in any event can only make recommendations and conclusions, which as many cases where examiners have been appointed illustrate are often contested by the parties thereafter as being simply one party's view based on a nonpublic record, because most of what an examiner is told

is not public, and is not even a basis for a particular person commencing litigation. I'm not sure what else is left other than that.

I will note, as did Chief Judge McMahon in the Purdue opinion that I cited earlier, the Debtors' commitment, which has been there since the beginning, to make public the record in this case after a plan is confirmed and goes effective, will clearly enable the most light to be shed by people who actually do look for truth, i.e. writers, scholars and the like.

As far as whether there should be some sort of test case, again, the public interest is as much served by a negotiation process, particularly with the parties involved in that process are so representational of parties in interest, as is the case here.

I really don't know more what I could say about what else is in the objection by the five creditors. If there is any concern about transparency and disclosure in this case, it appears to have been a self-generated concern without conducting any due diligence, and in fact, as noted on the record today, refusing the right to conduct due Joe legends offered by the Creditors' Committee. I said on March 18th and I'll say today again, one can make public statements using the nonlegal side of one's brain, but in a courtroom, you have to have more to back it up.

So I will grant the motion, having overruled all three objections, and enter the order that has been revised in consultation, with among others, and appropriately so, the ad hoc committee of nonconsenting states.

But I have not addressed, because I don't believe I need to, but maybe I should just for the record, the underlying jurisdictional issue here. It is clear to me that I have related to jurisdiction, which is all I need, since this is not a final order but rather a preliminary injunction, as discussed by Judge McMahon in her Purdue opinion, and also as set forth in SPV Osus v. UBS AG, 82 F.3d, 333, 340 (2d Cir. 2018), and Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 211 (2d Cir. 2014), as well as, of course, the truly controlling case here, Celotex Corp. v. Edwards, 514 U.S. 300 (1994).

It was also, I believe, clear to me under the case law, as well as the legislative history to the Bankruptcy Code, namely the legislative history of Section 362(b)(4) and (b)(5) (indiscernible) "United States Code Congressional & Administrative News" (1978) at Page 52, that I clearly have the power to issue an injunction here, notwithstanding that enjoined parties include governmental entities. See, for example, In re Commonwealth Companies, 913 F.3d 518 (8th Cir. 1990); In re T.K. Holdings, Inc. and District of Delaware; In re Ionosphere Clubs, Inc., 111 B.R. 423, 431

(Bankr. S.D.N.Y. 1990); and Browning v. Navarro, 743 F.2d !069, 1084 (5th Cir. 1984).

So, Mr. Kaminetzky, you can email the revised proposed order to chambers.

MR. KAMINETZKY: Thank you, Your Honor. We will do so.

THE COURT: Okay.

MR. HUEBNER: Your Honor, this is Marshall Huebner. I guess I will probably take the podium back now, with Mr. Kaminetzky's consent. And thank you, Your Honor, for your ruling on this injunction. I think that brings us to the last contested matter for today, the last matter for today, giving Your Honor's restructuring of the agenda to deal with the E.R. Physicians' motion first.

Let me first verify that I can be heard clearly by the Court?

THE COURT: Sorry. You just cut out, Mr. Huebner.

MR. HUEBNER: I was just seeking to verify that I could be heard clearly --

THE COURT: Oh. Well, yes, you can. You were so silent, but that's just because you fell silent.

MR. HUEBNER: No worries. So, Your Honor, ironically, I probably see fewer movies than maybe anyone on this entire hearing, but it happens that I do have two movie references relevant to this case, both from the iconic film,

"The Adventures of Buckaroo Bonsai", that hopefully will take us forward in our last few months here. One is, "The future begins tomorrow." And the other is, "Wherever you go, there you are." And hopefully, we will all be going somewhere together, as admonished and directed by the Court, and will be able at long last to have the future we all hope for with the right use of these assets to indeed begin.

With respect to wages, Your Honor, as I alluded to in the opening, we have resolved huge slugs of objections that might have been and have a narrowed motion on for today. And we're down to two objections to deal with to that substantially narrowed relief.

So let me begin by reporting that the very good news is that, as we set forth in our reply papers, the Debtors have reached agreement with the UCC, the nonconsenting state group, the ad hoc committee of consenting states and other governmental entities, and the multi-state governmental entities group on all aspects of the compensation of related relief that are up for today with respect to the motion at Docket 1674, which is now limited to the key employee retention plan, the key employee retention plan, which relates to, at the time of its filing, the eight insiders of the company that were found to be insiders at our suggestion and request last year. Two of those people have actually resigned since the motion was

even filed. So that group of eight is now down to a group of six. But that is not on for today.

We're going to continue to work with those core creditor groups, both on the six insiders, and then there are eight other people they still had some questions about. And so we're going to keep working on that as well, and as always, you know, in an ideal world, resolve all those issues consensually before October 28th.

But at a minimum, I certainly have a high degree of confidence, given our track record, that we will substantially narrow any remaining issues as to those few remaining folks, and that the sort of 608 or so people we're moving forward on today -- 606, I think -- are fully consensual, other than an objection by the U.S. Trustee and an objection by the self-styled committee on accountability, which as Your Honor knows, it's five individual claimants.

I don't mean to denigrate them. I certainly don't mean to denigrate or minimize any individual's loss, whether their own, or God forbid, a child or family member. But, you know, it does bear mention that it is actually five individual claimants. It's not a sort of a broad thing as represented as a committee the way, obviously, that groups like, you know 24 AG's or, you know, 30 governmental entities, or thousands of municipalities, or UCC obviously is.

But I think that that context does make a difference, as does the fact that while we cherish and respect the U.S. Trustee's office, they are not an economic creditor in this case. And given that we have, frankly, hundreds, actually thousands of governmental entities who are involved every single day in this case, I think that, frankly, their consent to today's relief, ultimately, in my mind at least with -- again, no disrespect to the U.S. Trustee's office -- weighs rather heavily against both the lone governmental objection of the U.S. Trustee, which I'll address on the merits in a couple of minutes.

So with that introduction, Your Honor, let me note that, as the Court no doubt is aware, since I again have no doubt that the Court is sitting there with our 11-inch binder with many yellow tape flags and post-its on it, much of this is extremely familiar to Your Honor, as in many ways it is in fact nearly identical to the relief that we sought and received from this Court last year. And I actually think that, again, with the exception of the U.S. Trustee, the relief that we are seeking today was not objected to by any party.

We also have reached an accommodation with the Creditors' Committee on an amended set of proposals and plans. And I think that with the exception of the CEO, which is not on for today, there was no objection by any

other party in the case, other than the U.S. Trustee.

What we did this year was again put in place successor programs, as the two declarations made clear, to the Debtors' very long-standing annual compensation programs that have been in place, I think, in one case for more than 20 years, and in one case for something like 30 years. The specifics of the plan are set forth in the motion and in the declaration, and so I'm going to be actually relatively brief, and not sort of retread what I know that the Court, and I'm sure others, have read closely as well.

With respect to the evidence for today, Your Honor, we have confirmed with the U.S. Trustee and the accountability group that they have agreed that the Debtors' two supporting declarations, one from John Lowne and the other from Josephine Gartrell, can come into evidence today. And I'd like to move their admission.

I do note that since the KEIP, which is also covered by their declaration, is not on for today, that the parties for whom you've extended their objection deadline, mainly the UCC and the three non-federal governmental groups, want to -- and the U.S. Trustee as well -- I don't mean to (indiscernible) on this -- to the extent that they, in the end, are not at peace with us by the 28th of October and want to cross-examine the witnesses on the KEIP issues at that second hearing, we certainly understand that that's

the case.

But as to the KERP, there is not going to be any such cross-examination by agreement of the parties. And we would ask that the declarations be moved into evidence as the Debtors' factual support for the relief being requested.

THE COURT: Okay.

MR. PREIS: Your Honor --

THE COURT: No, let me just make sure -- maybe this will head off some remarks. What you're asking me to admit into evidence are those portions of John Lowne's declaration, which is dated September 9th, and Josephine Gartrell's declaration, which is dated September 9 as well, that pertain to the key employee retention plan, except with respect to the eight people that are still under discussion, that would be otherwise within that plan?

MR. HUEBNER: It's a little bit different than that, Your Honor, because we don't actually need to come back and get a second order, if and as we get the governmental groups comfortable with their questions about those eight. And so that I think that as to the KERP, it's probably right to say that they're just admitted into evidence period.

THE COURT: All right.

MR. HUEBNER: Because if there are questions remaining about the eight, they'll be raising if they need

to.

THE COURT: But it wouldn't be --

MR. HUEBNER: With respect to the KEIP --

THE COURT: But it wouldn't be admitted as to the key employee incentive plan?

MR. HUEBNER: Yeah. They are --

(Overlapping speakers)

THE COURT: As to the (indiscernible) object --

MR. HUEBNER: Yeah. So that's a technical point that I guess you could (indiscernible). Mr. Preis and I were actually emailing each other 20 minutes ago about this question. The way I had sort of thought about it -- and I don't think he disagreed -- was that I don't know that you can admit only certain paragraphs of the declaration. So our thought was that the declarations get admitted into evidence, period -- not only certain sections or sentences of them, because some of it is sort of blended, like attrition and things like that -- but that it's understood that there will be a right to cross-examine the witnesses on the KEIP on October 28th, if anybody deems that necessary.

THE COURT: Okay.

MR. HUEBNER: But if --

THE COURT: I understand that now. So does anyone have an objection to the declarations being admitted with that understanding?

MR. PREIS: Your Honor, this is Arik Preis, from Akin Gump, on behalf of the Committee. Can I just say one thing?

THE COURT: Sure.

MR. PREIS: We don't object to what Mr. Huebner just said and how you correctly corrected it. One thing though, I'm going to guess that at some point Mr. Huebner or the Debtors are going to mention something about uncontroverted evidence, and forget to mention that they are referring only to that portion of the declarations that regard the KERP.

THE COURT: Well, I --

MR. PREIS: So just want to make sure --

THE COURT: I could tell you, I've read both of the declarations, of course read the Debtors' honor this reply, which details the subsequent agreement with the Committee, the NCSGs, the ad hoc committees, and the MSGE. So when I reviewed these declarations, I reviewed them focusing on the key employee retention plan, and as Mr. Huebner said, the portions that just discuss the Debtors' business and attrition issues and the like. So whether someone inadvertently says uncontroverted, it doesn't really pertain to anything other than what's before me today.

MR. PREIS: Okay.

MR. HUEBNER: And Your Honor, now I'll quote --

MR. PREIS: Thank you.

MR. HUEBNER: -- after you -- I'll quote the eighth chapter of Matthew, which is, I guess, "Oh, ye of little faith." I in fact would not have done that. I'm not sure why someone thought I would. So I think we're all good, which is the evidence is actually sort of open with respect to --

THE COURT: Well, I might have said it, so there you go.

MR. HUEBNER: So, all good. So, anyway, back to the subject. So, Your Honor, with that, with those clear and, I think, understood and agreed caveats, may we formally move the two declarations into evidence?

THE COURT: Yes. They're admitted as Mr. Lowne's and Ms. Gartrell's direct testimony.

(Declarations of John Lowne and Josephine Gartrell admitted into evidence.)

MR. HUEBNER: Very good. Thank you, Your Honor. So, Your Honor, as to the substance of the program that is up for today, which is the KERP, we essentially made three changes at the request for three categories of changes, at the request of the UCC and the governmental groups, that can be worked upon these issues.

Number one, a reduction in the total amount of the claimants by a little over $4 million, which is a 40 percent

or so cut off of the 2023 payable, 2020 (indiscernible).

Number two, that have asked that we move around some of the timing on payment and clawback provisions to make the KERP somewhat more retentive. You have one payment that's a little bit later, other payments are a little bit later, clawbacks still a little bit later in some circumstances. It's all laid out in our reply brief.

And then, three, as requested, actually, by the creditor groups, not by us, an acceleration of the LTRP payments that were already largely earned, but in order to keep them retentive, they're going to be payable in '22 and '23. We were asked actually to do those on emergence, subject to a clawback if the employee leaves without good reason or is fired for cause, until the originally proposed payment date.

So we would propose that they pay essentially, I think -- and I don't want to speak for them -- but people just didn't want the post-emergence company having to make payments for the pre-emergence period. And so they asked that we accelerate them. In one case, we said that's fine. But we actually want them to stay retentive, because we actually think it's very important to keep the right people here, obviously post-bankruptcy. And so we added a clawback in to ensure that that remained an important goal of the programs, which, frankly, is important to all of us, and of

course, everyone agreed with that. And now (indiscernible) deferral as to the eight people that I talked about before.

THE COURT: Do those --

MR. HUEBNER: So --

THE COURT: Do those -- I'm sorry, just on that point, on the clawback point -- do those people, if they left, say a week after the effective date of a plan, would there be other payments that the company would otherwise owe them that could be set off against a clawback?

MR. HUEBNER: Yeah. So, it depends, frankly, I think, on individual -- as probably an individual basis when exactly they left, when things had been settled up. You know, I'm guessing as a general rule, the answer may be no, because I think on your final day of employment, you know, assuming another pay cycle finishes after your departure, you know, VPs are obviously not the key executives, and so they don't have other things that are due over time. Again, the request was not ours to accelerate the payments, but I think we'll have to look to the clawback as a vehicle for getting the money back, you know --

THE COURT: Right. Well --

MR. HUEBNER: -- should people leave under the right circumstances or the wrong circumstances.

THE COURT: I mean, you still can, I guess, commence a lawsuit to get it back.

MR. HUEBNER: Correct. Correct.

THE COURT: Right.

MR. HUEBNER: And I'll just leave it at that, I think, for now.

THE COURT: Okay. All right.

MR. HUEBNER: So that leaves us with only two outstanding objections, as I said before. One from the U.S. Trustee and one from the five individuals represented by Mr. Quinn.

So, Your Honor, in sum, the rejections asked the Court just to do a wholesale rejection of this important aspect of the long-standing annual compensation. They don't actually really offer either factual or legal support for this request. And I also think they sort of sidestep what is in fact the governing legal standard for this, including this Court's ruling that there were not one, not two, but three hearings on analogous issues last years. Actually, four, if you count the mini, mini-plan that we did very early in the case for the six junior folks that we're doing (indiscernible).

What the U.S. Trustee's objection I think really unfairly overlooks is that these are not bankruptcy bonuses. This is not a second round of bonuses. This is annual compensation that has been part of annual compensation literally for decades. And so we made this motion for a

second time in the case because the case has now gone more than a year and the end of the year approaches.

And obviously, we could have done something that would have been very much against the interests of these estates, which is just simply move all these things into base salary, pay it over 12 months, not have the ability to incentivize performance, not have a strong retentive element of having the payments paid, you know, in some cases well after the calendar year ends.

But that actually would have been a terrible idea. I guess it would have obviated the need for anybody like (indiscernible) to object, because it wouldn't have had the word "bonus" attached to it. But it actually would have been so much worse for the estate and for the maximization of value, and for the running of this actually relatively large and complicated enterprise.

As Your Honor has recognized several times over this case and predecessor cases, non-insider compensation outside the ordinary course -- and there was, by the way, a strong argument, as I understand, last year that this is ordinary course. It's ordinary course because we've been doing it for decades. It's ordinary course because many companies do it. But we invariably take the more conservative route and put things out in full so I might even seek Court approval, and Your Honor has held that these

things are governed by 503(c)(3), and that that language essentially incorporates the traditional business judgment rule set out in Section 363(b).

And so again, reminiscent of last year, we went through the Dana II factors at extreme but appropriate length -- not extreme -- appropriate length in both our opening papers and our reply papers. And the Trustee just doesn't really address that. In fact, there's a grand total of about a page and a quarter in their objection actually about the KERP, and it actually doesn't really cite law, including the six factors in Dana that we went through in detail.

Here in particular, we're not writing on a blank slate because the Debtors are seeking essentially to continue an existing program that this Court already ruled, including overruling the Trustee meets the standard. And this year, we have even more evidence than we had last year.

We've already discussed at length at this hearing and its predecessors the likelihood of a successful reorganization, the fact that as Your Honor said, you know, at a prior relevant hearing, "This process does not happen overnight." It certainly does not. This is a very long and hard-fought (indiscernible) for all of us, no matter what our views are about the right outcome here.

But at the end of the day, we need employee's

every day, you know, running the corona gauntlet, showing up at the manufacturing plant, working next to colleagues, and producing the FDA approved medications and over-the-counter medications that we sell into the market under a self-injunction with a highly-respected monitor that we all agreed on.

So they're just not bonuses. As Your Honor noted last year -- and I'm quoting you again -- this is "essentially salary with some modifications or risks on either side, depending on how the employee performs and the company performs." December 4, 2019, Page 113, Lines 17-18.

And so the compensation, as we set forth at length, is marked. You know, it may be that the Trustee gets his sort of percentile thing from thinking about this as if it were a KERP, on top of TBC, total direct compensation. But of course, that's not right because, as we lay out in some detail, rather than having the AIP and the LTRP and the KERP and all that together, the KERP replaces the AIP. And so, without it, people would be very substantially undercompensated.

And as it was last year, it remains true this year, that Purdue, you know, continues to suffer from relatively material attrition. And not only did two of our eight insiders resign literally since we filed the motion, which is about three weeks, and that's 25 percent of our

most senior executives right there, but in addition to them, as of the time of the filing of the motion, another 85, or more than 85, have left since the petition date, which is an annual attrition rate approaching 14 percent.

And as you might imagine, getting new people into Purdue Pharma during a pandemic to replace these positions, many of which, as the Court knows, are you know, technical people, you know, people with doctorates, people with expertise, and anti-diversion, all sorts of things like that, it's very difficult.

And so again, you know, people sometimes lose sight of the fact that this is a company with complex vendor factoring operations that needs to continue to run its business safely and well for the benefit of all during times that are, without any possible question, unprecedented.

And so I'm actually going to, I think, leave the U.S. Trustee's objection at that, because I think that the motion and the weight of authority we cite in our papers, the uncontested evidence as to the KERP is the two declarations, coupled with the overwhelming creditor support, you know, probably, I think, leaves me able to say no more than that on the U.S. Trustee's objection.

As to the ad hoc committee on accountability, I would note that there as well, as the Court noted before, you know, this about applying the facts to the law. And the

legal standard is, is it a proper exercise of the business judgment of the Debtors? And I should know it is.

Of course, our papers make clear, this was the Board of Directors of the Debtors. The compensation committee of the Board of Directors, guided by Willis Towers Watson, you know, one of the sort of premier firms in the field, and obviously, counsel, and ultimately also negotiated with the creditor groups that have been with us on every issue large and small, sometimes in different chairs, but always with us on the issues with their opinions across the board.

What they do instead, unfortunately, is sort of similar to what they did on the injunction, which is just, frankly, make a series of extremely sharp and completely counterfactual and unsupported claims and attacks on the Debtors. They seemingly just don't understand, or are refusing to acknowledge, the changes that have taken place in the last several years, and that the Debtors, you know, if they want (indiscernible) -- Purdue and the Sacklers, like as I think everyone in this case knows, except maybe seemingly they don't know, it has now been almost two years since any Sackler held any position at Purdue.

And this company has been under the very watchful eye of this Court and the bankruptcy system. You know, the detailing or promotion of opioids stopped almost three years

ago. We've had a monitor now for moving towards a year. We've had a 15-page self-injunction, the most intense one probably on the planet -- I've heard no one correct me when I've sort of suggested that before -- in place now also.

So, you know, just attacking the company and saying that it's just sort of a terrible thing and therefore nobody should be paid, really just has no basis, and it's really time, hopefully, for those things to stop.

But more importantly, if the relief requested were denied and compensation that hundreds of people, including rank-and-file people and hourly wage earners and engineers and technicians and plant operators and anti-diversion people were all to be told that suddenly they're going to be making a fraction of both market compensation and a fraction of the compensation they have come to reasonably rely on that is reasonable and appropriate, the consequences for the value that we can deliver to address the opioid epidemic and the consequences to this case, for example, as Mr. Kaminetzky said before in the preliminary injunction context, if "this all falls apart, the private deals all fall away."

And if the private deals all fall away, we're back to hundreds of thousands of filed claims seeking trillions of dollars of damages that actually would cost billions of dollars to fully go through and resolve, it would sort of be

like Lehman, but without the trillion dollars of value that Lehman actually has.

We actually have far more claims than Lehman in a much higher amount than Lehman, and all of those deals are at risk if the value that we hope to deliver essentially to the country to ameliorate this epidemic evaporates because, you know, things like the (indiscernible) of this motion ultimately lead to a cascade of departures, which leads to the destruction of the Debtors' business, let alone the harm to patients from having FDA approved medication sort of yanked from them, potentially with little to notice, because we just have to shut down.

So Your Honor, this is all things you have thought about many times before in this and other cases. You actually rejected claims exactly like this last year, almost verbatim. And you actually specifically said on the October 11th hearing at Page 117 to 122 of the transcript, things like, it would actually be "bad exercise of business judgment to simply withhold payment."

Finally, Your Honor, I do want to note that the proposed order of course pertains, and did from the outset, the language that was extensively negotiated with multiple creditor groups, including the dissenting states, the consenting states, and the UCC last year -- I think Your Honor actually added some tweaks to it as well -- modified

from the language that had previously been approved by the Court in (indiscernible) that provides for safeguards to address issues with respect to finding out in the future the employees who got bonuses potentially engaged in this conduct. And that language, of course, is right in the order where it should be.

And so, Your Honor, I actually will leave it at that. You know, again, these are not, in our view, really sort of bonuses in the way that bonuses sometimes become, you know, I think very politically charged. This is really annual compensation that is thoughtfully designed and, frankly, withheld until the end of the year and beyond to make it retentive.

And as I said, and I'll say it one last time, I think the overwhelming support we have from groups that as Your Honor may -- very often do not agree with us on all topics, or some do and some don't, or some agree and others disagree bitterly, I think speaks massive volumes about the extreme, thoughtful, good faith engagement of the Debtors and how they designed the programs, adjusted the programs, and thoughtfulness and good faith of the other parties in working with us to come up with something that everybody could live with, and address some of their both social and economic concerns.

So, Your Honor, that is what I have to say about

the KERP. Obviously, as things come up in response to oral argument of either of the two remaining objectors, I would ask for the indulgence of a few minutes to address anything that seems necessary.

THE COURT: Okay. I had a question, and maybe you can answer it. Maybe Ms. Cartrell needs to answer it. I'm sorry, Gartrell. Excuse me. I think I said Cartrell.

Her declaration at Paragraph 49 has a table, and it says the aggregate market positioning of the KERP participants in the aggregate is shown in the table below. And I'm really focusing on the two boxes at the bottom of that table. And my question really goes -- I'm focusing on the 50th percentile in both of the boxes. And I'm just wondering how the agreement negotiated with the UCC and other parties, particularly the reduction by 4 million, would change the variance to market numbers for the 50th percentile?

MS. GARTRELL: Your Honor, this is Josephine Gartrell, from Willis Towers Watson, on behalf of the Debtors.

THE COURT: Yes.

MS. GARTRELL: The answer to your question is that it doesn't change because the $4 million reduction in the program was a specific reduction in the 2020 grant, which went from a little over $10 million to, I believe, down to

about $6 million. And so this market TDC analysis, when you see Purdue based plus proposal, takes into consideration the aggregate base salaries of these two groups, plus the KERP program itself.

And then when you see the second box that says Purdue based plus proposal, plus retention, that reflects the base salary, plus the KERP, plus the targeted retention for the subset of employees who would receive that.

THE COURT: So, I'm sorry, why isn't the $4 million -- why doesn't it change any of this?

MS. GARTRELL: Because the LTRP grant is not included in the aggregate positioning for TDC analysis.

THE COURT: I got it.

MR. HUEBNER: Your Honor, let me help for a second, which may help clear things up. Because that LTRP was not due to be paid until 2023, and now it has the potential of being (indiscernible). And so the effective date, it's not compensation that's paid in 2020. And so this chart just has different elements in it with respect to 2020 TDC.

THE COURT: So this is just 2020?

MR. HUEBNER: Ms. Gartrell, please correct me. I don't want to misstate why it wasn't in the chart.

MS. GARTRELL: That's correct.

THE COURT: Okay. All right. So I'm right that

if the midpoint in aggregate market positioning, for executives, at a low you're 12 percent under at the midpoint of the market, and the high point for the Purdue based plus proposal is five percent over 50 percent for the non-insider, middle management group?

MS. GARTRELL: That's correct.

THE COURT: Okay. All right. And this is based on other pharmaceutical companies, or companies in Chapter 11?

MS. GARTRELL: This is based on Willis Towers Watson's 2019 pharma survey. So it's only pharmaceutical companies.

THE COURT: Okay. So this does not reflect additional burdens on people in Chapter 11?

MS. GARTRELL: It does not.

THE COURT: I mean, not burdens, but the pressures that call people away from employment when they're working for a Chapter 11 debtor.

MS. GARTRELL: That's correct.

THE COURT: Okay. All right.

MR. HUEBNER: And Your Honor, in order to be clear, I mean, there is a lot that we say in our papers that I'm not belaboring, but I think it goes almost without saying that working right now at Purdue Pharma in Chapter 11, with you know, at least some uncertainty, to say the

least, about one's future and the company's ultimate pathway, it's certainly very different than being at a healthy, exciting, non-Chapter 11, you know, working on a COVID vaccine type environment. And so the motion will be -- can afford to be substantially below the 50th percentile and have any hope of a 14 percent very painful attrition level, not become a torrent that could be extremely dangerous to the enterprise, that actually speaks for itself.

THE COURT: No, I understand that. Although, I would hope that at least a large number of people would want to see this through to make something truly good happen from this.

MR. HUEBNER: Yes. And they do, Your Honor. And I want to be equally clear about that, which is, you know, the transformation of Purdue is in fact in no small part what is keeping, I think, many people at the company -- and obviously, you know, whatever one's view is, I think there are very few people who don't want to see a page turned to a new chapter for this company. And I think, you know, the employees are certainly being told and deriving, frankly, energy and satisfaction and enthusiasm from the fact that, you know, things like the mediation report I gave earlier with, you know, an agreement by all acknowledged parties, that all the assets are going to be used to abate the opioid

crisis. That's a huge driver of people getting up in the morning and sort of covering through the pandemic long enough to come to work.

THE COURT: And then one more question for Ms. Gartrell. The Willis Tower survey of pharmaceutical companies, at one of the earlier hearings you testified that the relevant companies that you looked at within that survey comparable in size to Purdue were about 84 companies. Is that still the same case for this analysis?

MS. GARTRELL: I don't recall the exact number that was used, but based on the participation rates, I would say that it's around that same number.

THE COURT: Okay. Great. Okay. Those were my questions. I'm happy to hear from the U.S. Trustee and from Mr. Quinn.

MR. SCHWARTZBERG: Good afternoon, Your Honor. Paul Schwartzberg, for the U.S. Trustee's office.

THE COURT: Good afternoon.

MR. SCHWARTZBERG: Your Honor, I know you have read the pleadings and I don't want to repeat what's in them. And as you can see from our Footnote 1, we understand that the relief sought here is similar to what was previously before the Court back in 2019. But since we were here before the Court at that time, issues have evolved that lead us to believe that the payment of the awards are not

justified at this point.

Specifically, Your Honor, as you are well aware, Your Honor had urged the creation of an emergency fund to help those who are suffering from opioid addictions. Unfortunately, that was not created, and funds have not yet gone out to help opioid victims --

THE COURT: Well, these people have nothing to do with that. That wasn't their decision.

MR. SCHWARTZBERG: At the lower level, that's correct, Your Honor. But in terms of the facts of the case --

THE COURT: I mean --

MR. SCHWARTZBERG: -- if management could focus on getting funds out to those who are victims of the opioid epidemic, rather than paying extra awards to --

THE COURT: I'm not -- you know, I'm sorry. This is just so wrongheaded. I rarely say this about your office, but these people, A, are not the decision-makers, and B, even the decision-makers here for the company are not responsible for there not being an emergency fund. It's just -- it doesn't have any bearing on anything. And it's really -- it's just so wrongheaded. I'm sorry. I rarely have this problem, but I really do on this point. It just doesn't make any sense to me.

MR. SCHWARTZBERG: Then, Your Honor, I'll move on.

The other issue we brought forth in our objection was the $8.1 million targeted retention fund, which out of all of the awards being sought, it's the least arguably compensation and seems to be an award that from the reading of the motion seems to be more of a discretionary award. The method by which it's going to be paid, the amount that's going to be paid, to whom it's going to be paid, are very vague and not possible to determine from the motion. And based on that, we didn't think that was justified by the facts and circumstances of the case.

THE COURT: Okay. So are you -- is your office going to be part of the discussions on the eight people that the settling parties have carved out of this order?

MR. SCHWARTZBERG: Your Honor, we're always happy to talk to the Debtor or any of the parties on the KEIP, and we're open to discussions if people would invite us.

THE COURT: I mean, the reason I ask this is that, first, I don't think there's any argument that those people are insiders. In fact, they're not insiders. So they can be provided with a retention payment. And the reason I think that it makes sense to be part of the discussion, as opposed to just saying I don't know, is that it's a highly counterproductive exercise to identify public the people who are so important, people who are not insiders and who are so important that you need to pay them more to stay, than

rather to share the information with the economic parties in interest, who can then double check your analysis.

To me, this is very similar to the argument that has been refuted by me a number of times, recently by Judge Seidel, affirming me in the Windstream case, as well as by Judge Hoffman, very respected judge from Ohio in the Murray Energy case, that you have to disclose all of the necessary vendors in the motion, which ensures that you're going to be paying more and angering more people than if you had a process to identify them that has checks and balances within it.

So it seems to me that the approach taken by the Committee and the two ad hoc committees and the governmental entity committee is the right one, which is we want to do the due diligence on this and see if there's something we disagree with the Debtors about, as opposed to laying out publicly, you know, who the Debtors think they really need to pay more to keep, which in this context, Congress expressly permits, than to pay more to keep them, because it recognized that unless you're feathering your nest, you're authorized to pay a retention plan.

So anyway, if you have a concern about that, I would urge you to be on the call, or at least have a debrief, as you often do -- I'm not faulting you on this -- you often do have a debrief. And it's not ready yet. But I

urge you to do it, to get it, as opposed to just saying we don't know. Because I think there's a good reason why you don't publicly disclose this, just as there's a good reason why the Committee and the other parties in interest said, well, we want to know more.

MR. SCHWARTZBERG: Yes, Your Honor.

THE COURT: Okay. Is there anything else?

MR. SCHWARTZBERG: No, Your Honor.

THE COURT: Okay. All right. Anyone else?

MR. QUINN: Your Honor --

MR. PREIS: This is our -- sorry.

THE COURT: I'm sorry.

MR. QUINN: This is Michael Quinn.

THE COURT: Go ahead, Mr. Quinn.

MR. QUINN: Arik, would you like to go first?

MR. PREIS: No, I think probably you should go first because you're objecting.

MR. QUINN: Your Honor, this is Michael Quinn again, from Eisenberg & Baum, from the ad hoc committee on accountability. Our argument here for not authorizing the KERP is that Purdue should not be granting companywide bonuses when it's been engaged in multiple crimes.

This plan, as constructed by the compensation committee of the Board of Directors, promotes companywide bonuses, or whatever term the Debtors would like to call

them, without regard to who it's going to.

One caveat to that, which the Board approved was that these bonuses wouldn't go to hourly wage workers. Six weeks before they filed their motion for you to approve these bonuses, the Department of Justice filed its claims in this case. Within those claims, the Department of Justice stated that Purdue's misconduct gave rise to criminal liability.

Both states also provide their claims to this Court in the summary, and both the consenting states and the nonconsenting states agreed that all unlawful conduct persisted.

Our issue is that the plant is not accounted all for carving out any employees that engaged in wrongdoing, let alone alleged wrongdoing. Take, for example, in --

THE COURT: Is it the other way around?

MR. QUINN: Well, yeah, I think you're right. It's the other way around. My apologies.

THE COURT: Okay.

MR. QUINN: Take, for example, Your Honor, in the DOJ's claims, they cite -- the summary claims -- they cite the Practice Fusion case. Now, our committee is aware of this case, as we brought it up last spring. In the original Practice Fusion information that was filed last January, U.S. Attorney for the District of Vermont recognized that

the coconspirators of the case, who the DOJ in their claim showed it to be the pharmaceutical company, Purdue, were engaged in those crimes.

The information further specified specific titles, without giving names, such as a brand manager, a director of e-marketing, and a physician. This, to me, shows that those type of individuals, those type of titles, are squarely within the KERP plan as potential employees to receive these bonuses.

My concern is that, A, it's possible those employees are still retained and will be getting bonuses, but also that the Board of Directors didn't evaluate whether this companywide plan is great, considering the potential crimes.

THE COURT: But you --

MR. QUINN: Now --

THE COURT: Have you --

MR. QUINN: Now, I under --

THE COURT: Have you read Paragraph 10 of the order?

MR. QUINN: I don't have it in front of me, Your Honor, but I'm assuming it has to do with a mechanism they've created that says if they're convicted in a court, the bonuses will be clawed back. Is that what you're referring to?

THE COURT: Yes.

MR. QUINN: Well, the problem with that is it puts a strong onus on the government to conduct the kind of activities that should be left to the Board of Directors. You know, it sort of shifts the burden for the government to prosecute a case, to bring it to court, to conduct laborious discovery, and to reach some kind of conclusion regarding these crimes.

Now, Your Honor, as you can probably imagine, having spent some time with me today, there's been years where, especially in my early days as an associate, I didn't receive bonuses. My firm wasn't going to give me a bonus and depend that -- you know, if there's a finding in a court that Mr. Quinn can't do his business at an extraordinary level, that we should claw back those bonuses. And I think the same applies here, Your Honor.

My other issue -- and I'll conclude with this -- is that it's just another sign that while Purdue, as the Debtor says and as Debtors' counsel says, is trying to become an asset in the fight against the opioid crisis, some of these long-term plans that have been in place, as the Debtor mentioned, for 20 or more years are still persistent. So this why I'm asking for the KERP plan to not be authorized at this time. Thank you.

THE COURT: Okay.

MR. HUEBNER: Your Honor, I don't -- Mr. Preis, I need to say just a couple of things, but why don't you go first, and then I guess I will (indiscernible).

MR. PREIS: Your Honor, is it okay if I speak now.

THE COURT: Yes.

MR. PREIS: Okay. For the record, again, Arik Preis, from Akin Gump Strauss Hauer & Feld, on behalf of the official Creditors' Committee.

Your Honor, I just wanted to make (indiscernible). I want to speak briefly about the compromise that we've reached with the Debtors regarding the insider bonus and non-insider retention plans. I'm not going to reiterate what was in the Debtors' papers for what they said on the record regarding the agreement, but I wanted to give you some background as to why we reached the deal that we did. I'm not going to comment on some of the things Mr. Huebner said that we disagree with, including some things he said about the attrition rate and how he characterized that. But it's not (indiscernible) --

THE COURT: You faded out. Can you hear me, Mr. Huebner?

MR. HUEBNER: Yes, Your Honor. You're perfectly clear. I think Mr. Preis was unfortunately --

THE COURT: Mr. Preis? Mr. Preis faded out

though. I can't hear him.

MR. HUEBNER: Yeah. I -- is there a problem --

THE COURT: Mr. Preis, can you just check to make sure you're not on mute?

MR. HUEBNER: Can somebody from Akin Gump text him, please?

MR. HURLEY: Marshall, I texted him.

THE COURT: Okay. That was Mr. Hurley?

MR. HURLEY: Yes, Your Honor. Yes.

THE COURT: Okay. All right. Well, you know what, Mr. Huebner, why don't you just respond while Mr. Preis is getting back on the phone?

MR. HUEBNER: Sure. Your Honor, just very quickly, as unfortunately, I may not give him enough time to get back on the phone. I don’t really have very much to say.

With respect to the U.S. Trustee's comments, I want to be very clear. I think the Court echoed the sentiments. It is very, very unfortunate that funds have not yet gone out. It's also unfortunate, if it were possible, that this case was not already over and all the funds going out.

But the people who object to this plan have no control whatsoever over the fact, as this Court knows well and I think everyone else on this call knows well,

essentially that there are five of the creditor groups in this case just could not agree on an ERF, and at the end of the day directed us to stop pushing for it because it would not have gone well, given their fundamentally different positions.

To say that someone out of the plant in Wilson, North Carlina or up in Rhode Island shouldn't get paid the part of their compensation that had been withheld for 30 years and paid at year end because of differing views at the high levels in government and otherwise over ERF, simply doesn't make any sense.

But we share the frustration that money is not yet out to help people. This is not the right way to address that.

With respect to the smaller number of people in the retention plan, Your Honor, just so the record is clear, I think our papers are clear on this point. The targeted retention is actually just a continuation of the plan that was approved last year. We're trying to spend money judiciously and only where we need to, because we know where every dollar that's there now is not going, and I think we try to be sensitive to that everywhere we can.

With respect to Mr. Quinn's relatively limited comments, I'll also be limited. What Mr. Quinn may not know is that last year, we already were, I think, collectively

quite sensitive to not paying people for (indiscernible) in the company's history that were, at a minimum, much more complex and under generally very strong views by the company's conduct. And we did things with respect to the various programs that essentially cut out the period that ended very early in 2018, when detailing stopped. We're now free of that, and so, you know, the reality is that this is 2020 compensation when Purdue was in Chapter 11, under the watchful eye of frankly hundreds of people, and dozens of staff, and 48 attorneys general, and the DOJ, and a monitor, and a self-injunction.

So I understand that people have very strong views about Purdue's past in all direction, and certainly with Mr. Quinn's clients, and I actually read some of their stories last night. And obviously, I have nothing but endless sympathy and pain for people who have suffered addiction, or lost children, or the like, which is just unspeakable, and there's no response to that. But the reality is that this is for 2020, when maintaining the value of these assets so that they can be deployed to god-willing stop, and ameliorate, and address the current crisis raging, is what this is for, and we believe it's carefully and appropriately tailored to do so, and I will leave my remarks at that.

THE COURT: Well, let me ask you, obviously Secretary, former Governor Vilsack is the monitor in this

case. Is there a reporting mechanism whereby if he determines that someone is engaging in misconduct, he'll report that to the board, and the board can take appropriate action, including cancelling payments.

MR. HUEBNER: Your Honor, the company has a very broad compliance program, that as you might imagine gets a lot of attention, and there compliance reports. I've probably been at every board meeting for the last now, almost three years.

And it's not just Secretary Vilsack, although I think that is also true, that he certainly has brought to the board, you know, whatever concerns he has, either structural or otherwise. I don't believe, to my knowledge, I don't want to sort of (indiscernible), so I don't believe that he has, in fact, ever pointed at an individual employee, because his current practice analysis is really about structures, and policies, and procedures, and best practices.

But there's actually a broad array of other mechanisms in place that are designed to ensure that the behavior of the company in the current period would hopefully be above anybody's reproach, even its most severe critics. And obviously I can -- I'm not getting (indiscernible) anybody to say that if obviously the company found out that people were engaged in this conduct at

present, immediate, decisive action would unquestionably be taken.

THE COURT: So, Mr. Preis, I see you're back on. I decided to go ahead, because you had other colleagues on the phone, with just letting Mr. Huebner respond briefly to the two objections. But you cut out pretty early in your remarks.

MR. PREIS: Okay, and thank you, Your Honor, and I apologize for that. And I was, I did catch up, I did ask my colleagues what Mr. Huebner was saying, so I think I am caught up. May I start over?

THE COURT: Well, where you left off that you weren't going to say why you might disagree with the Debtors on their view of attrition, but then you cut out.

MR. PREIS: Okay, so then what I was going to say is, what I really want to address the reasons why we reached the deal that we did. And I think that if I provide you these five points, it may help you as you consider the objections that were raised. I'm also going to address the two objections that were raised specifically.

So first and foremost, I want to thank the advisors to the ad hoc committee, and the nonconsenting state group, and the MSEG, as well as many of the actual AGs in the nonconsenting group, who we worked closely with and coordinated with over the past few weeks, in reaching a

compromise with the Debtors. As the Debtors said, the compromise was supported by all of our of us. We think that this full agreement by all the four groups is an important factor here.

The second point I want to make is that the fact that the four groups, we all view the non-insiders as very different than the six insiders that remain as part of the KEIP. We were very adamant about the fact that we needed more time to consider the request regarding the six insiders, and that more thoughtful and careful consideration and analysis as needed for the programs that were proposed for then. And frankly the analysis for then will include both economic and non-economic factors.

Conversely, with regard to the non-insiders, while the creditors' committee was not excited about the fact that the Debtors requested retention payments of $51 million to virtually all of their 614 employees over the next three years, the UCC made the decision that, as you correctly pointed out earlier, that penalizing the non-insiders for the situation we're in doesn't seem appropriate, and as such, we focused on the discrete issues with the non-insiders, and I'm going to raise those.

That being said, I don't want there to be any misunderstanding about the following, which is the fact that we were able to reach agreement on the non-insiders, and the

way that we reached agreement on them should not be viewed as a roadmap of any sort with regard to each of the insiders. We'll negotiate and discuss the insiders separately.

The third thing I wanted to raise is a key facet of the compromise, is that the retention program does not bind the hand of the reorganized Debtors. I think you alluded to this earlier, but all payments to the non-insiders were made as for the effective date if not sooner, subject to claw back that we talked about. This is designed to give the reorganized Debtors the flexibility going forward, and frankly, finality looking backward. I think you also, you realize as well, because you've made an illusion to it earlier, that this is actually better, in some ways, for the employees, because they get their dollars earlier.

Fourth, we, that all four groups appreciate the Debtor's agreement, both with regard to economics, which are the eight percent reduction, the overall plan from the non-insiders, and the timing of the payments, which are slightly delayed. I further point out something that you raised with the Debtor's experts, which is that the eight percent reduction only applies to 131 of the Debtor's 614 employees. Meaning that roughly 79 percent of the workforce is not affected by the economic reduction.

And I actually thought your question was perfect, Your Honor, about the question about how the employees are affect, or how that chart was affected by the decrease. And in fact the Willis Towers Lawson person said that it wasn't. And in fact, you know, because, as you correctly solicited from the Willis Towers Lawson person, that chart deals with 2020 compensation. And in fact, we have now frontloaded 2020 compensation. And so one might argue that employees are actually better off in looking at that chart.

Fifth, and finally, I do want to flag for the Court the deferral of the approval of payment, of the retention payments to eight non-insider employees, until the October omnibus hearing. There was some back and forth between both you and the Office of the United States Trustee, as well as the ad hoc group of accountability regarding certain items. And I would just say that we hope to work with the Debtors on an appropriate resolution for those employees, between now and the objection deadline, and we are happy to include the ad hoc group of accountability and the Office of the United States Trustee in those discussions. I think they would benefit, and they would understand why we asked for the deferral. With that, Your Honor --

THE COURT: Can I interrupt you on that point?

MR. PREIS: Sure.

THE COURT: The U.S. Trustee is a government official. I certainly trust the exercise of his discretion. I'm assuming your discussions, which cover fairly personal matters with the Debtors on that topic are confidential. I would not want this five-person group, which has already made unfounded and inflammatory statements, to go into such a review untethered by confidentiality. I just don't trust them. So you may, you may invite them, and if they're willing to get under the tent, fine. But otherwise, no.

MR. HUEBNER: Your Honor, for what it's worth, Your Honor, this obviously was -- we were not consulted. This is our information about our employees. With all due respect to Mr. Preis, we will have to talk later, I think, about the mechanics for (indiscernible) people, and I don't really think that should be offered in open court, (indiscernible) information?

THE COURT: That's fine, you know where I'm coming from.

MR. PREIS: Understood, Your Honor, and I should have correctly pointed out that this would be subject to confidentiality. I didn't mean anything otherwise, given the sensitive nature of the reason for the deferral.

With that, Your Honor, I have nothing else to add, but as I mentioned at the outset, I thought it would be helpful for you in considering the objections, to understand

the position -- our position as to why we reached the compromise. I don't know if either of the three governmental groups have anything they would like to add as well?

MR. TROOP: Your Honor, this is Andrew Troop of the nonconsenting states. I would just reiterate Mr. Preis's point that the compromise we've reached is independent of the actual representations, that the Debtors had made on a variety of points, and that all of those issues are potentially in play in the future. This was a compromise reached in recognition of the people involved and the specific concerns that we have with respect to some of them, which is why there is a deferral mechanism. And unless you have any other questions for me, in particular, Your Honor, that's all we have to say on this one.

THE COURT: Okay, thanks.

MR. HUEBNER: So Your Honor, if I may, just because we had to go out of order because of those connection problems. I just need about 60 more seconds, I'm going to cover Mr. Preis's things. I will be extremely brief.

Number one, just because Your Honor has noted at a prior hearing that the media sometimes pics up on things in ways that are not accurate and unhelpful, with apologies to Mr. Preis, to call this $51 million of retention, it's

actually in fact just completely inaccurate. This is a combination of long-term incentives that have been earned over a three-year period, that then would be repaid in 2021, 2022, and 2023, and the company's annual incentive program, and a much smaller actual retention program, that I believe is only about $8.1 million.

I just, I really -- (indiscernible) to all of us, if there was a headline that came out that said, you know, 51 million in retention bonuses approved, because that's just flatly wrong. It's not what it is, there are many components to it, and I think it's important that everyone understand that clearly. I think we have been very clear.

With respect to the second point about the request not to bind the hands of the post-emergence entity, again or the exact reasons the Court asked about, we actually at first were quite surprised and taken aback by that request, because our goal is to create an enterprise tant no matter want, people want to do it post-emergence, is designed to be durable and to hold its people to maximize value during whatever period it runs, in whatever form it runs.

And obviously one of the reasons you have a long-term incentive plan that is earned year by year, but paid on a three-year schedule, is to hold people. And I don't think I've ever had anybody in my whole career ask me, you know,

those payments due in '23 and '22, I want to pay them much earlier, which is why as I said before, we understood it, and we agreed to it as frankly our CFO and others were concerned about the loss of the ten-foot hold.

Because somebody having to wait to actually get a payment is frankly going to be viewed differently than the risk of being sued for a claw back, especially for potentially a more modest amount, or the cost of legal fees just might not justify it, if someone were being rationale. So we asked them, and added a claw back back in for some of those, so at least we had that tool to hold the company together, in all the ways we knew how, for the benefit of stakeholders.

But again, we're not the ones that asked to accelerate everybody's payments. I just, I don't want people to think that this is sort of one of those situations where the Debtors have thoughtlessly asked for quite big bonuses, and to pay them too early to people. It's not true at all. We were asked by the creditors to accelerate the payments, which we did, and put a claw back back in. And I think that that's really a very important point.

And then with respect to participation, again, I have no disrespect at all, at all, to the five individuals, and their life stories and experiences on the core committee for accountability. But we have many, many cooks in this

kitchen with a lot of people, many people who are official representatives, whether they are governmental officials, or the UCCs for all creditors, or the U.S. trustee's office. It's not going to be simple, frankly, I think, to convenience the Debtors of Mr. Preis's quote, "offer", close quote, that we should have individual employee information, and data, and compensation data, and the like, be share with yet another constituency. We're open to listen, but that's actually something that's best discussed behind closed doors, not at a hearing with 50, 70, 80 people listening in.

So with that, Your Honor, I appreciate at the end of the day, we are, I think (indiscernible) again, which is that we have non-objection, or support for this program, from all of the major creditor consistency and economic stakeholders in this case. The only two objections are that of the trustee and the five individuals, who are represented by the committee on accountability. And we would ask that the modified form of order that of course includes the, what if there is wrongdoing found language, be approved.

THE COURT: Okay. All right, anything else? All right. I have before me that portion of the Debtor's motion, dated September 9, 2020, for approval of a key employee retention plan, which has various features in it, but would basically cover 2020 through 2023 with the timing adjustment laid out in the motion, and as modified, as laid

out in the Debtor's omnibus reply in support of the motion the other day.

When evaluating such a plan, which I'll refer to as the KERP, even though it has various elements to it, the Court must first determine whether the employees to be paid are insiders or not. That is because in Section 503(c)(1), the Congress precluded, effectively, given the conditions in that section, the application or approval of a key employee retention plan for insiders.

The motion sets out how the Debtors went about concluding whether the participants in the KERP are insiders or not, under Section 101(31) of the Bankruptcy Code, in large part based on, entirely based on prior rulings by me in these cases, which in turn relied on well-established case law, including In re Borders Group, Inc. 453 B.R. 459, Bankr. S.D.N.Y. 2011, and In re Charles P. Young Company, 145 B.R. 131, Bankr. S.D.N.Y. 1996, and other cases that I had previously cited.

No one has contended here that any of the participants in the KERP is an insider, which means that instead of having to meet the, essentially impossible test to meet in Section 503(c)(1), the Debtors have to satisfy the requirement of 11 U.S.C. Section 503(c)(3), see for example, In re Patriot Coal Corp., 492 B.R. 518, Bankr. E.D. Missouri 2013. In re Residential Capital, LLC, 491 B.R. 73

Bankr. S.D.N.Y. 2013, and In re Global Aviation Holdings, Inc., 478 B.R. 142, Bankr E.D.N.Y. 2012.

That test, as set forth in the statute, says that there shall not, neither be allowed nor paid other transfers or obligations that are outside the ordinary course of business, and not justified by the facts and circumstances of the case, including transfers made to or obligations incurred for the benefit of officers, managers, or consultants hired after the date of the filing of the petition.

The case law is clear that the facts and circumstances of the case requirement is to be interpreted generally, as one interprets an action out of the ordinary course by a Debtor in possession, or trustee, under Section 363(b) of the Bankruptcy Code, which is often referred to as a business judgment standard, although that standard is not the deferential corporate law business judgment standard, but rather a standard laid out, I believe, by the Second Circuit, in, among another cases In re Orion Pictures, 4 F.3d 1092, that requires the bankruptcy judge to determine whether under the facts and circumstances, the KERP is the proper exercise of business judgment, or makes good business sense.

See also In re Velo Holdings, 472 B.R. 201-212, Bankr. SDNY 2012. The Borders Group case that I previously

cited at Page 473, and most appropriately In re Dana Corp, 358 B.R. 567, Bankr. SDNY 2006, where in the context of a determination under Section 503(c)(3), Judge Lifland laid out a number of factors that would be worth considering when determining whether an employee plan passes the facts and circumstances test, i.e. as a proper exercise of business judgment.

Those factors are well-recognized, and have been applied by numerous other cases, including the ones that I've also cited. They are, is there a reasonable relationship between the plan proposed, and the results to be obtained, i.e. will the key employees stay for as long as it takes for the Debtor to reorganize, or market its assets, as the case may be, i.e. is it calculated to achieve the desired performance? Two, is the cost of the plan reasonable in the context of Debtor's assets, liabilities and earning potential?

Three, is the scope of the plan fair and reasonable, does it apply to all employees, does it discriminate unfairly? Four, is the plan consistent with industry standards? Five, what will the due diligence efforts of the Debtor and investigating the need for a plan, analyzing which key employees need to be incentivized, what is available, and what is generally applicable in a particular industry? And lastly, did the Debtor receive

independent counsel when performing due diligence, and in rating an authorizing the incentive compensation, or in this case, the compensation, period.

Not mentioned by Judge Lifland, but very important, I believe, is the notice and opportunity for a hearing requirement that underlies the whole provision and the business judgment standard as applied in bankruptcy cases. And the nature of the responses to the proposal in particular, whether the proposal has substantial support at least among the creditor body. Not all these factors necessarily will be applicable. Ultimately the Court, again, has to evaluate the business judgment of the Debtors in proposing the plan.

Here, as modified, as set forth again in the Debtor's supplemental reply, or on to this reply, excuse me, in support of the motion, the relief that's being sought before me now has the support, as negotiated, with the key constituencies in this case, the official unsecured creditors committee, the ad hoc governmental committee, the ad hoc committee of nonconsenting states, and the committee of nonstate governmental entities, who again, represent basically all the people in the United States. The proposal is objected to by the United States Trustee, and by a group of five personal injury claimants and no others.

In addition, it appears clear to me, indeed I

believe uncontroverted, that the KERP, as proposed, is at or around the average, on a total basis, of all the factors combined, of compensation in the Debtor's own industry, the pharmaceutical industry. It's testified to both in a declaration and on the record today, by the Debtor's compensation consultant on this trial, from Willis Towers -- that is, a broad-based database of roughly 80 to 85 pharmaceutical companies of the same size, or roughly the same size as the Debtors -- and moreover does not take into account the additional pressures on a Debtor's non-insider workforce and related uncertainty, resulting from the Debtors being in Chapter 11, and there not yet being a proposed Chapter 11 plan.

Congress, in Section 503(c)(3) for non-insiders clearly preserved the ability to pay more than market, to retain key employees who are not insiders. And the Debtors could make a case for paying more than the 50th percentile, give or take five percent above or below, with respect to non-bankruptcy companies, given the pressures that are on them, and their employees in this Chapter 11 case.

The plan further appears to me not to discriminate unfairly among employees. It's quite comprehensive. It is also consistent with the Debtor's approach, with respect to their employees, for at least 20 years, and in the case of most of their employees, for over 30 years. It is

uncontroverted that it's consistent with industry standards. It is also uncontroverted, of course, that the Debtors' board and compensation committee were advised by a compensation consultant that's well-recognized as well as counsel, and of course there was dud diligence on what is now before me by well-represented creditor groups, including the official creditors' committee, which have the resources to engage in the type of analysis that I've just described.

The U.S. Trustee has objected to the plan on two grounds, one of which I find completely unjustified, even frankly as being raised, which is that these employees, who are concededly not insiders, should somehow have their market-based comprehensive pay reduced substantially, by -- in light of the fact that the Debtors have not confirmed a Chapter 11 plan yet, or have made an emergency fund distribution, pending such confirmation.

I have never seen, and have been cited to no case law where that would be -- where that type of analysis would be relevant to these types of employees, and I can understand why, given the fact that they have no say over either of those things, other than just their ability to keep working. They were clearly not negotiating the emergency relief fund, that wasn't their job. And similarly, they are not negotiating a Chapter 11 plan. The people who are negotiating both of these matters were the

Debtor's senior management, the Debtor's professionals, and professionals for other key constituents in the case, and in the case of plan negotiations, two highly compensated and effective mediators.

Secondly, the Debtor -- the U.S. Trustee contends that the cost of one of the portions of the KERP as a percentage of the Debtor's revenue, which is one of the factors, arguably, in the Dana II analysis, I used the cost of the plan reasonable in the context of Debtor's assets, liabilities, and earning potential. That is considerably over the 50th percentile. But I will note first that it is only one of the factors, and moreover, it is just a cost factor related to the Debtor's revenue, as opposed to assets, liabilities, and the other factors listed by Judge Lifland, including the importance of these employees and whether the proposal is necessary to achieve the desired result.

Far more important to me, frankly both in connection with an evaluation of a KERP and a Key Employee Incentive Program, which is not before me today, is how the overall proposed compensation relates to the market in the Debtor's industry, and although less meaningful, how it relates to comparable companies in Chapter 11. Here, the motion's underpinnings are clearly supported by the record, and I believe it is quite easy to find that the KERP, as

negotiated, with the proper exercise of business judgment, subject to review that is far beyond any sort of review that would occur out of a bankruptcy case, and justified by the facts and circumstances of the case.

I do have some concern of the acceleration of payment upon the Debtor's emergence from bankruptcy. On the other hand, that concern, which is frankly not retentive, and of course one element of the Key Employee Retention Plan is to retain employees. On the other hand, I believe it's more important to pay employees a market level of compensation on an aggregate basis to ensure their retention, and in the few circumstances here where due diligence shows that even more is required, to do so on a very targeted and thoughtful basis, of which there's a process in place now to meet that decision.

Further, I'm given some comfort by the fact that I noted earlier in today's hearing that the key parties in interest here have acted responsibly throughout this case and in good faith to maximize value, so that that value can be distributed to their constituents, to abate the opioid crisis. It seems to me that they will not act foolishly to cause the workforce to be unduly concerned about its future following the effective date of the plan. I think they simply want to preserve flexibility as to what a plan will look like.

But I do not view this group, who after all are attorneys general, and comparable city council -- I'm sorry, city, county, and other representatives, travel representatives, all of whom are fiduciaries for those people, to take an action that would cause the Debtors to lose substantial value, by losing substantial numbers of its -- of their employees.

The five-person ad hoc committee essentially argues that the Debtors, in the past and perhaps now, although they've not offered any support for that matter of contention, are essentially a criminal enterprise, and therefore should not have employees who are compensated. I have dealt with this in the past, that the Debtors are in a highly regulated industry, their products are lawful, and used in proper ways. The Debtors have substantial checks and balances in place to ensure that that continues.

In addition, at my request at the beginning of the case, the Debtors have negotiated with the key parties of interest, and agreed upon the appointment of Mr. Vilsack as their monitor, over and above the regulations that they are under. I do not believe it is a propose exercise of business judgment to pay employees of these companies below market compensation, because of past events, pre-petition events.

There is a, again, a provision that I had a

substantial hand in, a paragraph in the order that provides for a claw back if past criminal activity has been identified. The Debtors are on record that no such misconduct will be permitted to occur post-petition, and so I am focusing again on the business judgment of whether to pay these non-insider employees a fair compensation on a market rate. And to me, given the underlying premise that has not been refuted here, that the value of these Debtors is maximized by their continuation, and in fact that premise has been if anything, strengthened by the result of the mediation that just concluded, I concluded that objection should be overruled.

One last point, I will note that there has been loose language here, as loose language in prior objections, that described this program as a bonus program.

The record is clear that these payments, in addition to being, tracking a longstanding practice of over 30 years, in most cases, albeit reduced from what they were prepetition, is necessary to compensate these employees at market in their industry.

To me, as I've said previously, and has not been refuted, but merely has just been stated again, it's a bonus, without refuting my earlier finding. This is really compensation; this is not a bonus. If there's any bonus here, it's the limited stay bonus for the eight people. So

with that, I'll grant the motion; the order can be submitted as it has been revised.

The last thing I'll say, and I'll be very brief, as we may lose the feed here, since we've been on for going close to four hours. I, my thinking on key employee incentive plans has been evolving over the last few years. And I think what I would benefit from, if the parties cannot reach agreement on a key employee incentive plan for the insiders is again, a focus on the market of the Debtor's competitors. And a recognition, of course, that those plans often include equity, which would be difficult to include here, except for post-effective date equity, and even then would be problematic.

And I think Willis Towers and people of their like would be better off focusing on how to address that simple distinction between equity and cash than on focusing on Chapter 11 KEIPs, key employee incentive plans. I want to know about what's the industry standard, and I want to know whether the incentives are properly targeted.

I will note that fighting over other things related to KEIPs really does not lead to much of a change, if anything, but it does lead to more cost. See, for example, Jared A. Ellias, E-L-L-I-A-S, Regulating Bankruptcy Bonuses, 92 California Southern Law Review, 653, March 2019. It's fine to have guidelines and incentives. I'm fully

onboard with that, particularly if negotiating with key parties in interest. Looking at what other Chapter 11 KEIPs did is less significant to me than the marketplace generally, as long as the experts can translate cash bonuses from incentive bonusses, that is, from stock bonuses, taking into account the risk of the latter, and the assurance of the former.

So with that being said, I'm not sure there's anything else on today's agenda.

MR. RAND: Yes, Judge, can you hear me?

THE COURT: Yes, I can hear you.

MR. RAND: James Rand, I'm an inmate. I am a personal injury claimant creditor, I'm calling you from the United States Penitentiary, Terre Haute. I was scheduled for 9:30 telephonic hearing with you, however due to the perils of a maximum-security prison, it didn't happen.

But I'm in communication with you now, and this is rather minute, but I filed a motion for tolling of filing deadline. Due to the coronavirus sequestering and being incommunicado, et cetera, I didn't have access to pens, pencils, stamp, et cetera. I couldn't send my form in to the Prime Clerk, and --

THE COURT: Mr. Rand, can I interrupt you?

MR. RAND: Yes, sir.

THE COURT: And I appreciate your patience of

staying on the line throughout this whole hearing. I don't believe that your motion is on the agenda for today's hearing as a contested matter. When --

MR. RAND: I received notice from Court Solutions to be in communication with you via telephone at 9:30 today, sir.

THE COURT: But that's because you wanted access to the hearing. I (indiscernible) --

MR. RAND: Is it necessary that I have a personal communique with you in regards to a motion of tolling of filing deadlines?

THE COURT: I'm going to tell you what you need to do, okay?

MR. RAND: Yes, sir.

THE COURT: Okay, I'm assuming that you have filed that motion, and asked to have it served. I doubt you've actually served it yourself, given where you are.

MR. RAND: I've received a docket number. It has been filed with the Bankruptcy Court.

THE COURT: All right, okay. Now you also have to get a hearing date from my courtroom deputy, Ms. Lee. It will probably be the next omnibus hearing date, under the order that I entered earlier in this case, establishing hearing procedures. That way the parties will know when it is on the calendar, and they can address it.

If it's not on the agenda, if it's not on the calendar with the hearing date, then they're not going to address it, and I'm not going to address it, because it's -- they haven't had a chance to focus on it, and neither have I. So I again apologize for you being on this call as long as you have, but this isn't on today's agenda, and you need to get it on the agenda by asking my courtroom deputy to put it on the agenda, Ms. Li, L-I --

MR. RAND: His name is Lee?

THE COURT: Yeah, her name, Dorothy Li, L-I. You can also speak to one of the Debtor's lawyers to put it on the agenda as well.

MR. RAND: What is the actual phone number of Ms. Li, if I may ask?

THE COURT: You know, I don't know, but if you just call the Bankruptcy Court in White Plains, it'll get to her.

MR. RAND: The what court, sir?

THE COURT: My court, the U.S. Bankruptcy Court, S.D.N.Y, in White Plains, New York.

MR. RAND: I got you, sir. Well, I really enjoyed listening, I got quite a continuing legal education, sir.

THE COURT: Okay, very well.

MR. HUEBNER: Your Honor, just on behalf of the Debtors, we're obviously happy to try to help, obviously the

constraints the gentleman is operating under are (indiscernible), and so --

THE COURT: One last point, Mr. Rand, one last point. You know, you heard about the mediation, which included a mediation of personal injury claims distribution, not how they will be distributed among the Claimants. So I don't know whether you're looking to have your claim be deemed timely filed, because it missed the bar date. I'm not quite sure what you're looking for, (indiscernible) --

MR. RAND: I filed a motion due to being incommunicado, that I didn't meet the any deadline, from the virus.

THE COURT: Fine, again you just have to get that hearing date, and then it will be considered, or the Debtors will deal with you on it, as they often do, and try to resolve it with you without a contested hearing.

MR. HUEBNER: Your Honor, we obviously don't have the motion in front of us, but you know, we will endeavor to get in touch with Mr. Rand. Mr. Rand, just to help everyone, Mr. McClammy from our firm, Jim McClammy is the personal who is in general one of the points of intake for claims and late filed claims issues. So if you do have the opportunity to either email him or call him, we'll see what we can do. Again, we don't know the substance yet, so I don't want to overpromise, but you know --

MR. RAND: What number would I call, sir? Do you have an actual number you can give me.

THE COURT: Just look up Davis Polk.

MR. RAND: Polk, how you spell?

THE COURT: Is the --

MR. HUEBNER: Your Honor, I think he can find it on the internet, if you don't mind (indiscernible) --

THE COURT: Yeah, D-A-V-I-S --

MR. RAND: I don't have internet access, I'm in a maximum-security prison. Polk, P-O-L-K, huh?

THE COURT: Davis Polk, like the president. D-A-V-I-S, new word, Polk.

MR. HUEBNER: Yeah, why don't I just give him Mr. McClammy's office line? Because I imagine things are quite challenging over there. Which again, is available on the internet, sir, I'm not giving up anything that he couldn't find, (indiscernible) --

THE COURT: All right, that's fine.

MR. HUEBNER: Sir, it's (212) 450 --

MR. RAND: (212) 450 --

MR. HUEBNER: 4584.

MR. RAND: Well, sir, thank you for -- I'm very much obliged to you. I'm the only person in the history of the United States to be convicted of witness tampering where there was no crime and no witness.

THE COURT: Well, all right, but that's neither here nor there as far as this hearing is concerned. So let me ask you, Mr. Huebner, is there anything else on the agenda for today? I don't think there is.

MR. HUEBNER: No, Your Honor, everything else is adjourned, hopefully adjourned never to return, it's mostly the motion about (indiscernible).

THE COURT: Okay, very well. So I'll look for the orders that I've asked you to send me, and I'll ring off at this point. Thank you, all.

MR. RAND: Thank you, sir.

(Whereupon these proceedings were concluded at 1:55 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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